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**Bridging the Gap:
From Oblivion to the Rule of Law**

**Development and Vitality
of the Francophone and Acadian Communities:
A Fundamental Obligation for Canada**

Presented to the Senate of Canada by

Senator Jean-Maurice Simard



Ottawa, November 1999

Invitation to the Reader

A study such as this, which is part of a movement in which the interested and concerned citizens and organisations are gradually becoming more aware of the issues involved, could inspire readers to react to certain passages or to contribute to the thinking on the issues and thus help further the debate. Senator Jean-Maurice Simard invites you, the reader, to inform him of your thoughts on the matter.

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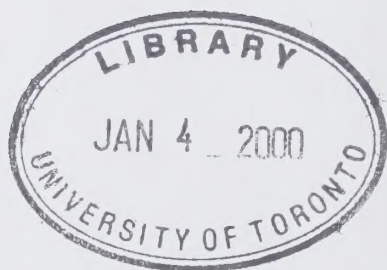


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DEDICATION

This report is dedicated to the late Richard B. Hatfield, former Premier of New Brunswick, who, throughout his career, recognised and supported the French fact in Canada. To his death, Mr. Hatfield, an enlightened francophile, retained a warm kinship for the Acadians and other Francophones of his province, and for those of Canada as a whole. His interest was apparent in the action he took to improve the well-being of Acadians and Francophones.

Mr. Hatfield was an ardent defender of a generous, receptive and harmonious political vision in which the Francophone society of New Brunswick and Canada was open to, and an influence felt in, the rest of the world.

Foreword

"None can deny the heritage of the earth which witnessed our birth and watched us grow."

Although a chartered accountant by profession, I gradually moved into politics, and eventually held ministerial positions in the Hatfield government for nearly 15 years before being appointed to the Senate of Canada. As a politician, I have worked for nearly 30 years now to promote the central characteristic of Canadian bilingualism, the equality of French and English.

I have done so out of a commitment to justice and fairness, particularly for the Acadians of New Brunswick, but also for the Francophone and Acadian communities of the country as a whole.

I have also done so out of a love for my country because I felt that the fate of Canada's official language minority communities was fundamentally linked to that of Canada itself.

For the same reasons, many Canadians hold dearly to the notion of ensuring the quality of French and English and the future of these communities. In their minds as well, this equality is without any doubt an essential condition for the future of Canada and the prosperity of Canadians.

Motivated by these feelings, I became very much interested in the development of the linguistic framework in Canada at a time when, in André Laurendeau's analysis, "Canada was going through the worst crisis in its history," and I wanted to take an active part in building this framework.

Still today, I feel I have a duty to take part in the development of the linguistic framework that Canada needs in order to secure its future.

The hope of ultimate success, which was inspired in me by the passage of the *Constitution Act, 1982*, the *Official Languages Act, 1988* and the 1993 constitutional amendment establishing the equality of the linguistic communities of New Brunswick, has gradually yielded to a grave concern: are we missing the boat?

For this reason, I tabled a motion of inquiry (the text of which appears in Appendix 1) in the Senate of Canada on June 17, 1998, calling my colleagues' attention to the erosion of the foundation of linguistic duality and calling upon them to debate these matters of national interest over the following months (which they did and for which I am very grateful - see Appendix 2). In addition, I declared at that time that I intended to undertake a thorough review of these matters and to conduct consultations across the country.

This report contains the main findings and recommendations for action that follow from this work, which I made sure was serious, honest and unpretentious.

This report is the result of a collective effort. I am indebted to my assistant, Mr. Gérald Bouchard, for his advice, support and dedication.

I must also thank the report's writer, Mr. Pierre LeBlanc, President of PRAXIS Management Consultants, for the quality of his analyses, advice and writing, and for the scope and depth of his knowledge and thinking.

I am grateful as well for the invaluable contributions to the incubation of this analysis by writer Rino Morin Rossignol, whom I asked to draft the text on the French language which appears in Appendix 10, by journalist and political consultant Michel Gratton and by Mr. Charles Castonguay, teacher and mathematician.

I would also like to thank all those persons across Canada (see Appendixes 3 and 4) who took the time to think about and answer our questions, who shared with us their information, analyses, values and convictions, as well as their faith in the future of the communities and of Canada.

Lastly, I wish to thank the members of that august institution, the Senate of Canada, for their support and contributions to this process of reflection, which is crucial for the future of our country.

**C'EST UN AMOUR
(La langue française)**

Provincial Theme Song of French in New Brunswick (1991)

Music: Étienne Deschênes

Lyrics: Albert Belzile and Étienne Deschênes

Elle est mon premier cri de terre
Mon lien de sang, mon lien de chair
Elle est mon souffle et mon chemin

Chemin de quatre cents printemps
Semé de gloire et de tourments
Longtemps chantés dans nos refrains

Refrains hérités de nos pères
Comme un trésor caché
Ma langue, elle est ma vraie fierté

C'est un amour
Qui se réveille à chaque jour
Comme un écho de notre histoire
Un son qui me touche et me plaît
Et que je veux vivre en français

Parler français en Amérique :
Un projet héroïque
Qui dépasse le temps

Temps de péril ou de victoire
Gravé cent fois dans nos mémoires :
Français, richesse et différence;

La différence de l'Acadie
Qui nous identifie
Et nous rattache au coeur de France

C'est un amour
Qui se réveille à chaque jour
Comme un écho de notre histoire
Un son qui me touche et me plaît
Et que je veux vivre en français

J'ai le goût d'aimer
De vivre en paix librement
Pour que mes demains
Résonnent en chant de liberté
Pour tous mes enfants

C'est un amour
Qui se réveille à chaque jour
Comme un écho de notre histoire
Un son qui me touche et me plaît
Et que je veux vivre en français

C'est un amour
Qui se réveille à chaque jour
Comme un écho de notre histoire
Un son qui me touche et me plaît
Et que je veux vivre en français

C'est un amour

Summary

Commonly, parliamentarians have little interest in official language questions. All too little in fact because they have not taken the time to understand the actual impact of the status and use of French and English as the official languages of Canada on the national psyche and on Canadians' pride in belonging to this country. Nor have they reflected sufficiently on Canada's future as a country or on Canadians' quality of life and prosperity now and in the future.

The linguistic and cultural continuity of Canada's Francophone linguistic minorities is definitely not a foregone conclusion. The renewal, development and vitality of these communities are not assured, nor are the full recognition and equality of use of French and English in Canadian society.

We must take the time to reflect on and debate these matters.

Linguistic duality is one of the main pillars on which Canada was built, a fundamental aspect of our country's history and future and a basic reality of the symbolic universe and daily lives of millions of Canadians.

We have a duty as parliamentarians to devote enough time to the problems and challenges of the development of Francophone and Acadian communities to grasp their complexity and understand the issues, one of which is the very future of Canada. We have the duty to determine appropriate and realistic actions properly suited to the specific conditions faced by each of these communities, and to implement the appropriate programs graced with the requisite resources to actively involve the dynamic forces of all of Canadian society.

Sections 16 and 23 of the *Constitution Act, 1982* and the *Official Languages Act*, more specifically Part VII, are of national scope and purpose. These provisions, which are reviewed in this report, are intended to provide a national remedy for the gradual erosion of the official language minorities. The achievement of their purpose is having a decisive impact on the Canadian identity, national unity and the future of all Canadians. Taken together, these provisions create a positive obligation for the Canadian government to act quickly to achieve their object.

Canada is recognized in the concert of nations and widely admired internationally for its defence and ongoing promotion of the rule of law, democracy and human rights.

The Canadian State must do more than it has thus far to ensure compliance with and implementation of language rights which, as the Supreme Court of Canada established in *Mercure* (1988), must be considered as "a well-known type of human rights".

To this end, the Canadian State (the executive, legislative, judiciary at the federal, provincial, and municipal levels) must do better than it has thus far to ensure respect for the rule of law, the very basis of the legitimate authority which citizens recognize it as having and the source of their respect for it.

With regard to the importance of language rights in general, the Supreme Court has noted:

The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts, to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society. (*Bilodeau*, [1985] 1 S.C.R. 721 at 744)

Unless one has repeatedly experienced the phenomenon throughout his lifetime, it is hard to understand to what extent a person responsible for providing a service to the public can, without wishing to do so or even realising it, undermine one's human dignity by answering, in English, "I don't speak French." That person need not say, "Speak white." The effect is equally disconcerting when that person fails even to take note of your language and answers in English without the slightest reaction, as though you were a mirage. It is the repetition that gradually wears a person down, sapping the very core of one's identity.

One's dignity can be even further undermined when such a person is a public servant personally responsible for providing a public service to taxpayers, who are thus forced to pay for the privilege of being insulted. All the more so when you, the citizen speaks to that person, with a smile and a courteous manner, in one of the official languages of your country, which your ancestors have helped to build over the past two or three centuries.

What do you do when you find yourself in need, when you are vulnerable because you need a job in order to feed your children, or are ill and cannot find the words to explain where it hurts, or you barely understand a third of the explanations you are given concerning the potential cross-effects of three separate medications you are required to take, or regarding foods that you must absolutely avoid which might provoke a potentially lethal allergic reaction? Nine out of 10 Francophones living outside Quebec who are unable to obtain service in French at medical facilities feel the effects and pay the cost of a seriously deficient official languages policy.

Francophones must acquire the means to establish viable and vibrant communities in which they find satisfaction and their vital "raison d'être". Their community is that place where their personality and passions flourish, where their individual and collective right to speak is clearly established, where their cultural identity shines, where they feel their centre of gravity and their existence is not only confirmed but celebrated. It is a place from which they can emerge individually and collectively and live as full-fledged citizens.

The Canadian State must guarantee Francophones and Acadians genuine equality of opportunity, in education and in government services at all levels, in economic, educational, cultural, social, medical, technological and community infrastructures. This is a question of justice and fairness; it is also a matter of legality and compliance with Canada's constitution. It is above all a national responsibility that must be borne by all governments and all Canadian elites. It may even be a national emergency.

To the extent that they were guaranteed equality of opportunity, fewer and fewer of these Canadians would be willing to give up their identity and blend into the majority. Assimilation would cease to be the scourge it is today, would cease to impoverish the communities and decimate their ranks.

To the extent that they were guaranteed equality of opportunity, fewer and fewer of the young people who must now leave their homes for lack of employment opportunities and reasonable prospects would have to go and earn their living in the major urban centres, where, lost in an Anglophone sea, they assimilate for lack of suitable community reference points and support. Those who go to the major centres to get an education could return and enrich their home environments.

To the extent that Francophones and Acadians were guaranteed equality of opportunity, on the strength of the generative effects of this kind of social success, all of us as Canadians could develop such pride in our society's true values (those manifested by our actions), such pride in being Canadians and citizens of this country that American patriotism might pale by comparison and, who knows, as a result of the high degree of social cohesion that we would thus have achieved, U.S. economic performance as well!

This is the challenge that awaits us. Let us roll up our sleeves and find the courage to meet the challenge of ensuring equality of opportunity for official language minority communities. This is a considerable challenge, but one that is worth meeting and overcoming.

Francophone minorities must not consider themselves weak, poor and marginal, but realize instead that they, like others, have the energy, imagination and intensity necessary to promote and revitalize Canadian society. The majority, with its feelings of false security and a concern to protect what it has, is less able to draw skilfully on its

intuition to generate a continuously renewed society. Without realising it, and often while resisting it, the majority depends on the considered energy of the minorities.¹

Vibrant minority communities contribute to the protection of Canadian society because they are one of the main keys to the preservation of Canada's integrity. Positive action by government is both an affirmation that their fair share of the benefits of Canadian society is theirs by right and by moral responsibility, but this action is especially an investment by government and society in one of the driving forces of the State's continuous renewal.

At present, virtually half the school-aged children outside Quebec who have a constitutional right to attend a publicly-funded French school reflecting the culture of the linguistic minority in the province or territory where they live, and managed by this community, nevertheless attend primary and secondary schools in the English-language school system. They study in publicly-funded English schools (or immersion schools) similar to the English schools which, decade after decade, for over a century, assimilated successive generations of Acadians and French-Canadians.

Consequently, thousands are permanently losing their constitutional right to an education in French and, consequently, all of their constitutional linguistic rights. The same applies to all of their descendants.

Many of us in this country have made considerable efforts, each in our own sphere of activity, to promote the vitality and support the development of Canada's Francophone and Acadian communities and to promote recognition of the equality of use of French and English, and did so long before the Canadian government made a solemn undertaking to do so in Canada's Constitution. Despite all our efforts over the years across the country, much remains to be done. In short, the Canadian State must do more, and we must all work together to this end.

Community leaders devote far too much of their precious energy to enforcing the law, which normally the responsibility of governments, the police and the courts. The leaders of community associations also spend more than half their time justifying their existence and the worth of their actions and projects to the Department of Canadian Heritage. Perhaps without wishing to do so, or even with the best intentions in the world, a large share of the communities' resources and collective energies is thus being siphoned off. There must be a more efficient way of ensuring the communities' development.

It is also surprising to note that, despite media coverage often designed more to trigger and fuel controversy than to report news, Canadian public opinion, according to the analysis of Professor Stacy Churchill, has remained strongly in favour of official

¹ This was the gist of some of the remarks by John Raulston Saul at a recent talk to Franco-Ontarians on the theme "Theatre and Society".

languages policies over the past 25 to 30 years. Professor Churchill's analysis has also led him to the conclusion that government administrations have failed lamentably in their attempts to inform Canadians of this support. This "hidden success", to his mind, is in fact a government communications failure. The media, press and political elites of Canada are also to blame as they have constantly failed to provide the public with a fair account or summary of the actual opinions of the majority of Canadians.

All of us who are members of the Canadian Parliament must reassert our political will with renewed vigour in this field which is vital for the integrity of our collective future.

All of us who are leaders in the regions of the country where we live or in the sector of Canadian society in which we work, or who are perceived as such, no longer have any reason to hedge our bets and procrastinate.

Together we must display leadership and a vision for Canada's future and prosperity. This leadership and the commitment which gives it its form must come first of all from the Government of Canada and all provincial and territorial governments. We must roll up our sleeves, find courage and determination and make the necessary heartfelt effort to bridge the gap by ensuring the development and vitality of the Francophone and Acadian linguistic minorities and full recognition and use of French and English as the official languages of Canada. We all recognise as this report suggests that the spirit of oblivion must cease and the rule of law must prevail.

Our legislative and constitutional system calls for this, and Canadians wish it as well. The Francophone and Acadian communities demand it.

The 42 recommendations contained in this study constitute an energising road map. They call upon the leaders of Canadian society as a whole, not only those who direct the Canadian State at various levels, to act.

The 10 recommendations cited below form the framework of the comprehensive recovery plan which we have developed.

We recommend that a Minister of State for the Development of the Official Language Communities be appointed. This Minister of State will have executive responsibility for this statutory horizontal policy which is the official languages policy. In particular, he or she will be responsible for ensuring compliance with the *Constitution Act, 1982* and for orchestrating the implementation of Part VII of the *Official Languages Act* throughout government, in addition to championing and overseeing the development and implementation of support programs for the development of the communities and promotion of full recognition of French and English in Canadian society.

We recommend that a Secretariat for the Development of Francophone and Acadian Communities be established within the Privy Council Office. This Secretariat, headed by the Deputy Secretary² for Development of the Communities, and provided with adequate resources, will support the Minister of State for Development of the Communities and the Cabinet in the full implementation of the linguistic obligations of the Government of Canada, including the orchestration of the implementation of Part VII of the *Official Languages Act* by the 128 targeted institutions. The Cabinet Deputy Secretary for Development of the Communities will chair the Committee of Deputy Ministers on Official Languages and provide it with the necessary support and orientation for the full implementation of Canada's official languages policy.

We recommend that all the provinces entrench in the Constitution the current legislative and political provisions respecting parliamentary, legislative and judicial bilingualism, with a view to extending and reinforcing them, and undertake to provide their services in the minority language (as some are already doing to a certain degree) in compliance with section 20 of the *Canadian Charter of Rights and Freedoms*.

We recommend that a comprehensive government program involving all 128 federal institutions with significant responsibility under section 41 of the *Official Languages Act* and the provinces and territories be adopted. In particular, this program will include a strategy to involve the provincial governments in providing active and sustained support for the development of the communities, including mechanisms for joint action by the federal and provincial governments. The program will also include a retroactive review, and renegotiation if necessary, of agreements respecting devolution to the provinces and their contractual terms and conditions to correct deficiencies and ensure implementation by the provinces of policies and programs to comply with the letter and spirit of the federal government's linguistic obligations under the *Act* and the Canadian Constitution.

We recommend, for any future devolution or transfer of federal responsibilities to the provincial governments or the private sector:

(a) that the agreement concerned contain specific provisions guaranteeing compliance with and enforcement of Canada's official languages policy, including penalties and compensation for any violation thereof;

² This Deputy Secretary, with an executive classification, would report directly to the Clerk of the Privy Council for administrative purposes.

- (b) that a mechanism be established to ensure the ongoing participation of the Francophone and Acadian communities in any agreement's development and implementation;
- (c) that the federal government, together with the provincial and territorial governments, develop a comprehensive federal-provincial framework agreement which would be signed in order to achieve the purpose of the language rights set out in the *Constitution Act, 1982* and the *Official Languages Act*, in particular Part VII of the latter;
- (d) that the federal government meet with the private businesses and agencies granted government mandates over the past decade to inform them about the fundamental aspects of the official languages policy, including the implications of the *Official Languages Act* and *Canadian Charter of Rights and Freedoms*, to define a "federal government - agencies/businesses" framework agreement for the implementation of the official languages policy;
- (e) that the federal government withhold transfers to the provinces and territories, and payments to private businesses and agencies, which do not take adequate measures to comply with the letter and spirit of the language provisions of the *Constitution Act, 1982* and Canada's official languages policy.

We recommend that the funding formula for organizations dedicated to the development of the communities be redesigned based on the findings of a future joint study to be conducted by the Government of Canada and the key organizations representing Francophones and Acadians, and this concerning identifying sustainable funding formulas serving to those organizations' self-sufficiency and effectiveness. We favour the creation of a trust fund of some \$500 million constituted gradually over a period of five years. This trust fund would be administered by a joint management committee consisting of representatives of the communities and the federal government and will also provide for a dispute resolution mechanism. This revision will have to involve all sectors of Francophone and Acadian society, including women, ethno-cultural communities, young people and the less fortunate.

We recommend that the Government of Canada provide itself with the means to meet its legislative and constitutional education obligations:

- (a) by linking transfer payments to the provinces to full execution of the obligations dictated by section 23 of the *Canadian Charter of Rights and Freedoms*;
- (b) by re-crafting the purpose and parameters of the Official Languages in Education Program (OLEP);
- (c) by increasing funding allocated to minority French education to a sufficient level to stop the erosion of the Francophone and Acadian communities.

We recommend that the funding envelope recommended by Mr. Donald Savoie be increased to \$100 million over five years and be used solely as a lever to generate key institutional infrastructure projects in the communities. These projects would be initiated jointly by the federal institutions and community players in the corresponding sectors (health networks, centres of excellence in economic development, centres for research in new communication technologies and Francophone universities and colleges). We recommend that very specific access criteria be developed, including the criterion that *every dollar of investment from this catalyst fund be tied to a minimum investment of four dollars* by the federal department or institution responsible for the issue in question, in order to ensure a multiplier effect. This fund would be called the "Francophone and Acadian Institutional Network Infrastructure Fund".

We recommend that the Fédération des communautés francophones et acadienne du Canada undertake a comprehensive analysis of cases in which remedy can reasonably be sought from the Federal Court of Canada, including cases of inappropriately designed devolution and transfer of federal programs, and that it prepare the cases and institute appropriate proceedings for the correction of problem cases and restitution. We also recommend that the Commissioner of Official Languages energetically support Federal Court challenges initiated by Francophone and Acadian authorities.

We recommend that the Senate of Canada apply the test of linguistic duality and compliance with the precepts of the *Official Languages Act* and the language provisions of the *Constitution Act, 1982* to every bill which the House of Commons submits to it for consideration and approval.

These recommendations were articulated in the spirit of the Supreme Court of Canada's August 1998 judgement in *Reference re Quebec Secession*, which recognises that language rights, including the development of the communities, have the status of one of the four fundamental principles forming the very basis of the Canadian constitutional order.

It is necessary to make a more profound investigation of the underlying principles animating the whole of the Constitution, including the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities. Those principles must inform our overall appreciation of the constitutional rights and obligations ... We emphasize that the protection of minority rights is itself an independent principle underlying our constitutional order. (Our emphasis.)

Some have understood that, in the wake of the *Beaulac* decision handed down on May 20, 1999, the Canadian government is compelled to act appropriately. We surmise that the communities will once again have to take legal action to ensure understanding of and compel full compliance with their rights and the linguistic obligations of governments.

Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada. (p. 3) (Our emphasis.)

The Court added that "mere administrative inconvenience is not a relevant factor" justifying the denial of Canadian citizens' constitutional rights.

It is clear that linguistic and constitutional rights must now be fully honoured and implemented.

The current political situation is favourable. The erosion of the Francophone and Acadian communities continues. Canada's future as we know it is in jeopardy. All the governments constituting the Canadian State are deemed to know how to govern. Their administrations are deemed to know how to administer. Let them govern and administer; the public expects nothing less.

1. Introduction

Reviewing all government activities relating to Canada's official languages policy and its implementation over the past 30 years proved to be quite a challenge. However, this analysis is essential to an understanding of the government's activities and the way Canadian society has evolved. It reveals the increasingly pronounced discrepancy between the state's growing statutory and constitutional obligations respecting the development and vitality of official minority communities and the actual, far too modest efforts which successive governments at all levels have made, as well as the belated and distinctly inadequate results that have been achieved. It also affords an understanding of the physiology of this partial failure by the Government of Canada and the provinces, and indeed by Canadian society as a whole, and points to types of activities that have the potential to improve future prospects for all Canadians.

My colleagues and I first reviewed most of the studies that have marked the evolution of linguistic development in Canada since the work of the Royal Commission on Bilingualism and Biculturalism and that enlighten us in regards to its trajectory. These include a number of publications by the Fédération des communautés francophones et acadienne du Canada (FCFA du Canada), and its forerunner, the Fédération des francophones hors-Québec, the special studies and annual reports of the Commissioner of Official Languages, other government publications, in particular by the Department of Canadian Heritage, including those of its predecessor, the Department of the Secretary of State Canada, and the Treasury Board, the works of experienced researchers who have carefully examined language rights, the vitality of the communities and language development policies and their effects, analyses of public opinion profiles and so on. In each case, we have attempted to ascertain the most significant trends, gain a clear grasp of the problems involved and better understand the pattern and factors involved in the various successes and failures, and draw conclusions as to the implications for the present and the future.

We then consulted as broadly as possible, hearing the key players, exchanging views with experts from various backgrounds and discussing certain types of action with the authorities concerned. Some 35 community associations and 14 federal and provincial political parties answered the invitation to our consultations.

Lastly, in this report, we have stuck to the essential aspects of the question, presenting only the facts, analyses and conclusions which, in our view, should be brought to the attention of federal and federal government leaders, the leaders of the official language minority communities and Canadian elites with a concern for the future of our country, that is all those who have taken personal and collective responsibility for that future so that they can be better informed and take prompt action.

2. Canada's Official Languages Policy

The purpose of this section is to present the main thrust of Canada's official languages policy from its origins to the present, to provide a summary of its effects over the past 30 years and to offer a current picture of the adequacy, or the lack thereof, of the resulting linguistic development and means used to date to achieve the general object and purpose of the system of language rights and obligations in effect in Canada.

Canada's linguistic duality, which means the presence of French and English and the co-existence of two major linguistic communities, the one Francophone with origins dating back to 1604, and the other Anglophone, which was mainly established starting in the eighteenth century, dates back to the origins of our country. It is part of Canada's history and of our identity as Canadians; it lives on through the institutions we have developed and is intimately bound up with the future of Canada and Canadians.

The First Nations as well are part of the foundation of our country and their contribution to the very nature of our society and to the Canadian psyche is undeniable. The harm that Canadian society and its governments have caused the Aboriginal peoples has been proven, and sufficient remedy has yet to be made. While this study does not focus on this issue, the reader should not lose sight of the fact that the Aboriginal imperative and its historical and constitutional framework form part of the backdrop to the Canadian constitutional and linguistic framework.

To fully understand the scope of the language rights conferred on Canadians, it is important to view those rights in the context of the social, political and demolinguistic dynamics that gave birth to them in the course of the country's history.

The history of the cohabitation of French and English and of the two linguistic communities is clearly divided into three separate stages: the era of Anglo-homogenisation, the Quiet Revolution and the historical turnaround of the 1960s, and the birth of a new plan for Canadian unity anchored in the official language minority communities.

2.1. Anglo-Homogenisation

According to historian Blair Neatby, the period of Canada's linguistic history from 1755 to 1960 was to a large degree "the era of Anglo-homogenisation".³ Of course, the demographic strength of the first French, then Canadian, then French Canadian presence at times called for concessions in an increasingly democratic society, as was the case with the Act of Quebec in 1774. This act had the effect of entrenching in the very essence of the country the language and religion of the "Canadiens", thus plotting out the course of its existence for more than two centuries. Of course, the situation varied from province to province, but one thing remained constant: the English language was perceived as an instrument of assimilation, or at least for uniting the communities around a common language.⁴

In the report he drafted following his inquiry into the rebellions of 1837, Lord Durham equally eloquently and shockingly expressed this plan for society, which was to secure Canadian unity through the assimilation of the French-speaking inhabitants of Lower Canada to the English language and British culture and institutions, which he believed to be superior.

The public schools, financed out of public funds, were assigned the mission of carrying out this "Anglo-homogenisation". All the provinces with Anglophone majorities would have a clear and distinct language policy. English would become the main, indeed the only, language of instruction. The history of education shows that, over nearly a century starting in 1854, numerous statutes were passed to restrict or prohibit instruction in French, in whole or in part.⁵ The impetus for these devastating statutes came from, among other things, the Ku Klux Klan, which orchestrated the election of the Anderson government in Saskatchewan in 1929, for example. The same impetus is provided to this day by the Aryan Nation, the Heritage Front and the Association for the Preservation of English in Canada (APEC), whose ties with the Reform Party, among others, have been documented.⁶

³ It should be remembered that, for a number of generations, the European wars between France and England in the seventeenth and eighteenth centuries necessarily affected the lives of colonists in the New World. Acadia, for example, changed from French to English jurisdiction and back again 11 times between 1604 and the Treaty of Utrecht in 1713. The expulsion of the Acadians in the eighteenth century, which in today's terms may be considered an act of ethnic cleansing, is an eloquent demonstration of this approach.

⁴ Blair Neatby, *Our Two Official Languages over Time*, Office of the Commissioner of Official Languages, Ottawa, 1992, p. vi.

⁵ Including in the following provinces: Prince Edward Island (1854), New Brunswick (1871), Ontario (1885, 1889 and 1913), Manitoba (1890 and 1916), Alberta (1892), Saskatchewan (1892, 1918 and 1931).

⁶ *Report on the Heritage Front Affair to the Solicitor General of Canada*, Security Intelligence Review Committee, December 9, 1994.

Unconstitutional measures were also taken starting in 1890 to abolish or render inoperative the language rights of French Canadians in Manitoba, Saskatchewan and Alberta. It was not until a century later,⁷ between 1979 [*Forest* decision] and 1988 [*Mercure* decision] that the Supreme Court restored the status of French as an official language of the legislatures, legislative process and courts of those provinces.⁸

Franco-homogenisation, the counterpart of Anglo-homogenisation, did not occur in Quebec, which is the province that has most respected the foundation of bilingualism since Confederation. Instead of dominating their Anglophone minority, Francophones, more for religious than linguistic reasons, tended instead to turn inwards. In fact, the reverse appears to have occurred, according to certain demographers who find that the effects of Anglo-homogenisation are being felt in the Outaouais and on Montreal Island.

The federal government, which was born out of Confederation, held that it did not openly practise a policy of Anglo-homogenisation, and yet it did nothing to block passage of the provincial legislation or territorial orders limiting the use of French, and did not disavow them. It also aided and abetted in the violation of the rights of the Metis people, an effort which reached its peak with the hanging of Louis Riel, from which the Metis are still recovering. Without forgetting the irreparable harm done to the Metis, this ill-advised act confirmed a significant psycho-political trait in the country's Anglophones: their calling into question of the legitimacy of the French language and indeed of the aspirations of French Canadians.

Under the direction of Clifford Sifton, Canada's Minister of the Interior from 1896 to 1906, the Government of Canada implemented an immigration policy designed to colonise the Canadian Prairies, one of the main effects of which was a sharp decline in the number of Francophones living outside Quebec as a percentage of the total Canadian population.⁹ The purpose of this policy was to populate the Prairies with strong-bodied "good farmers" from similar climates who were docile and, especially, non-Francophone. Immigration offices were set up in the United States, England and Eastern Europe. As authorities especially did not want to see another Francophone power rise west of Ontario, they encouraged Americans, British nationals and

⁷ The cumulative effects of a century of disregard for the constitutions of these provinces and of the Northwest Territories before them were devastating for the vitality of the Francophone communities. The decimated Francophone villages and anglicized institutions scattered across the Canadian Prairies are testimony to the damage caused by "Anglo-homogenization".

⁸ However, the Court held that s. 110 of the *Northwest Territories Act, 1891* was not part of the Constitution of Canada, but rather the Constitution of Saskatchewan (and thus of Alberta) over which the province had full jurisdiction. Section 110 was repealed in the same year by the *Language Act* in Saskatchewan and the *Languages Act* in Alberta, two statutes which granted French only limited status, but passage of which was consistent in all respects with the 1891 prescriptions respecting the equality of French and English.

⁹ The present Canadian immigration policy, except as regards Quebec, is based on this racist former policy.

especially Ukrainians,¹⁰ as well as other colonists from Eastern Europe to immigrate. Mr. Sifton won his bet because the Prairies' Francophone community remained minuscule and in the margins of regional power. Was this not the dividend garnered from Louis Riel's hanging?

Section 133 of the *British North America Act* of 1867 granted French and English equal status in the Parliament of Canada and the Legislative Assembly of Quebec. French and English were thus the official languages of the debates and journal of debates and of the process of adoption and publication of statutes. French and English are also the official languages of the courts under Canadian and Quebec jurisdiction.

However, the federal government's parliamentary and judicial bilingualism is mainly a bilingualism of form, of appearance only, rather than genuine bilingualism. In actual fact, English has dominated since the early 1960s and is still the language of work of the federal public service and, in general, the only language in which its services are provided. Successive federal administrations have thus been content with pro forma equality.

English is also still the language of work of provincial and municipal governments outside Quebec. Services are generally not available in French, except of course in the case of those services provided by municipal and educational administrations in towns and small regions with very large Francophone majorities. Outside these areas, English is also the language of commerce, professional services, the media and the business world.

Despite the key role which the language of instruction plays in ensuring linguistic continuity, instruction in the language of the minority at the elementary and secondary levels is recognised in only one province, Quebec, because the statutes and regulations restricting or prohibiting instruction in French in whole or in part have not yet been repealed in the nine other provinces.

However, there are a certain number of public French elementary schools in communities with clearly predominant Francophone and Acadian majorities, in provinces where this is not expressly prohibited by law, often managed at the local level by Francophones, but not a single public French secondary school. A system of private colleges established and directed by religious communities provides secondary instruction, often in accordance with the provincial English educational program, as well as the "cours classique" in French, in which, however, only a very small minority of Acadians and French Canadians outside Quebec can afford to register and receive instruction.

¹⁰ To the government's consternation, the Ukrainian colonists, to their credit, did not remain as docile as expected, and the Canadian government thanked them by incarcerating them in internment camps during World War I.

In short, despite its official bilingualism, Canada at the beginning of the 1960s, to all intents and purposes, remains an Anglophone country.

2.2. Historic Turnaround of the 1960s

The Quiet Revolution in Quebec was undeniably a turning point in Canada's history, brought about by a number of forces including: industrialisation, urbanisation, the secularisation of society, declining birth rates among Francophones and the tendency among post-war immigrants to adopt English rather than French as their second language.

Reacting to the lack of space made for their language and culture in our country, increasing numbers of French Canadians in Quebec came to consider themselves first of all, if not exclusively, Quebecers.

To ensure their survival and maintain their majority position, they opted to affirm themselves collectively as "maîtres chez nous", in Jean Lesage's phrase, took charge of the provincial government whose role had expanded considerably since 1945 and decided to make French the principal language of Quebec society. Many French-speaking Quebecers gave up hope of being able to live and flourish in French elsewhere in the country.

The *Quiet Revolution* marked the failure of domination and Anglo-homogenisation as the preferred means of securing national unity. Faced with the prospect of breaking up, Canada was compelled to recognise the fair and legitimate place of the French language and Francophones in the country.

In 1963, attaching new importance to language issues, the federal government established the Royal Commission on Bilingualism and Biculturalism (B & B Commission), which conducted in-depth studies and held public hearings in all regions of the country.

In the blue pages of the Commission's Preliminary Report, André Laurendeau, taking the pulse of the country, sounded the alarm: "*Canada is going through the worst crisis in its history!*".

To resolve the crisis, the B & B Commission developed an action plan, the main features of which were as follows:

Main Recommendations of the B & B Commission 30 years ago	Percentage Achieved in 1999¹¹
Declaration of equality between English and French and federal institutions; solemn, symbolic and effective affirmation that the two languages have equality of status in the Parliament and Government of Canada.	85 per cent
A federal administration reflecting the values of Francophone and Anglophone Canadians in which both languages might be used with comparable freedom.	25 per cent
The Commissioner of Official Languages would see to it that the federal government takes the necessary steps to implement these proposals.	75 per cent
Equality of status, as complete as possible, for English and French in the National Capital Region.	65 per cent
A network of bilingual districts to be established across Canada within boundaries determined by the federal and provincial governments to ensure adequate legal protection for official language minorities.	0 per cent
The right of Canadian parents to have their children educated in the official language of their choice.	80 per cent
Ontario, Quebec and New Brunswick, where 95 per cent of members of the official language minorities live, must be institutionally bilingual to the same degree. ¹²	25 per cent
The other seven provinces should ensure that French-language services are provided to their minorities based on local concentrations.	15 per cent

¹¹ The percentages assigned for the realization of each recommendation are based mainly on the analyses contained in the studies by the Commissioner of Official Languages.

¹² Institutional bilingualism refers to the language of communication and service to the public, to the possibility of working in French or English within the federal government and to the equitable representation of Anglophones and Francophones at all levels of the Public Service of Canada. Over the years, Quebec has complied with this principle to a far greater degree than any other province.

Thirty years later, although there have been considerable achievements, the B & B Commission's action plan to lead Canada out of the crisis has only been partially implemented, and belatedly at that.

As the government of both English- and French-speaking Canadians, the federal government undertook in the *Official Languages Act, 1969* to provide its services in both languages and also, consequently, to establish French as a language of work in the federal public service. In 1970, the federal government also established support programs for the development of minority communities and, together with the provinces and territories, took part in the funding of education as much in the minority language and as in the official second language in various provinces.

The Victoria Charter of 1971, which was supported by all the first ministers of the country, provided for an exclusive veto for Quebec over all constitutional amendments (the principle of the double majority for the two linguistic groups) as well as parliamentary, legislative and judicial bilingualism in all provinces. Once back in Quebec City, however, Premier Bourassa, on the advice of his advisers, who doubted that Quebec had struck the best deal possible, changed his mind and refused to approve this historic unanimous agreement, which was more favourable for the French language and Quebec than any other agreement since negotiated.

This was a lost opportunity to enhance the vitality of the communities and suggests that political life imposes harsh discipline when it comes to not seizing opportunities when they arise. As will be seen in section 4.6.2, the Trudeau Government missed a second golden opportunity when it refused to honour the agreement signed by the government of its predecessor Joe Clark with the Fédération des francophones hors Québec to create a tripartite commission.

Nonetheless, the notion of bilingual districts, within which federal-provincial-municipal cooperation and joint action with the private and voluntary sectors was to create genuine living environments in which French and English-speaking Canadians could have lived and flourished in their language, was abandoned because of weak political and administrative leadership on the grounds that it was difficult to implement and that, in particular, it was difficult to determine the boundaries of such districts.¹³

The federal government is now scarcely beginning to address the spirit of this recommendation (once again in a very partial and belated manner) via Part VII of the *Official Languages Act, 1988*, the similar aims of which are to encourage joint action with the provincial governments to provide services in French to the Francophone and Acadian communities and to actively support the development of those communities through their programs. Joint action with the municipalities and private and voluntary

¹³ One may suppose that the Supreme Court would now characterise these difficulties as "administrative inconvenience", as it did in the *Beaulac* decision of May 20, 1999.

sectors is only now in the earliest stages. Equality of opportunity is still far from being a reality.

2.3. Canadian Unity Linked to the Vitality of the Minorities

The historic turnaround of the 1960s fostered the emergence of a new, more realistic plan for society, which is gradually supplanting the policy of Anglo-homogenisation practised for the last two centuries.¹⁴ The idea behind this new vision for Canada's future is to ensure Canadian unity not through English assimilation, but through the maintenance and development of the country's Francophone and Acadian communities. The scope of this vision was broadened by the *Constitution Act, 1982* and the *Official Languages Act, 1988*: Canadian unity would henceforth have to be achieved through increased vitality for the Francophone and Anglophone minorities of Canada.

An analysis of language rights reveals that important developments took place between the *Official Languages Act, 1969*, the *Canadian Charter of Rights and Freedoms, 1982* and the *Official Languages Act, 1988*. Efforts at each stage were aimed at countering the phenomenon of too little too late in that they reinforced previous measures that had been deemed insufficient. The Government of Canada clearly still has a very long way to go, particularly since the statutes currently in effect have simply not been fully implemented or complied with.

In 1992, the Parliament of Canada and all the provincial legislatures unanimously agreed to entrench in the Constitution "the attachment of Canadians and their governments to the vitality and development of the official language minority communities across the country". Although this blueprint for constitutional renewal, the Charlottetown Accord, was not implemented, this component, which went virtually unchallenged,¹⁵ was consistent with the clear trajectory of Canada's development over the previous three decades.

The purpose of Canada's official languages policy is to ensure that both Anglophone and Francophone Canadians are not confined to only one part of the country, but, on the contrary, can move and settle elsewhere and continue to feel they are full-fledged citizens. The goal is for them to be able to earn a living and reside in other regions, while continuing to be able to communicate to a large degree with their federal, provincial or municipal governments in the official language of their choice and to have their children educated in schools that speak and transmit their mother tongue and culture.

¹⁴ However, this movement has not erased the vestiges and reflexes of Anglo-homogenisation, which can still be observed in certain strata of Canadian society and the political classes.

¹⁵ The vitality of Canada's Francophone and Anglophone minorities and the progression towards equality of status and use of French and English appear to enjoy exceptional support in Canadian public opinion, as is indicated in the data reported in section 4.3.

The Canadian government is supposed to be the government of all Canadians, regardless of their first official language, and Canada is supposed to be the country of all Canadians, regardless of where they decide to live. This country has much work to do to translate commitment to reality in a way that enables its Francophone inhabitants to feel they are full-fledged citizens.

The official language minority communities scattered across the country are the bearers and guarantors of Canada's linguistic duality, which stands at the core of our national identity. They are guarantors of the status and use of Canada's two official languages. They alone can guarantee the existence, in linguistic terms, of reasonable conditions in which Canadians can exercise their right to circulate freely in their own country.

This new plan for our society, a guarantee of our future, is obviously still in development in greater detail and, especially, a work in progress.

2.4. Education: the Cornerstone of the Development of the Communities

While English-language public schools have been the preferred instrument in the policy of Anglo-homogenisation practised across the country over the past two centuries, French schools must obviously be the main instrument of francisation and internalisation of the culture and education of Francophone and Acadian youth in a modern Canada.

2.4.1. Legal Scope of Section 23 of the *Charter*

Parents who belong to the Francophone or Anglophone minority of the Canadian province or territory where they reside have a right to have their children educated in their language in minority educational institutions or in institutions conveying the minority's language, reflecting its culture and managed by it. Their right is guaranteed by section 23 of the *Canadian Charter of Rights and Freedoms*, which forms part of the *Constitution Act, 1982*, which took effect on April 17, 1982.

In its 1984 decision in *Quebec Association of Protestant School Boards v. Attorney General of Quebec*, the Supreme Court of Canada addressed section 23 for the first time in the following terms:

The framers of the Constitution manifestly regarded as inadequate some - and perhaps all - of the regimes in force at the time the *Charter* was enacted, and their intention was to remedy the perceived defects of these regimes by uniform corrective measures, namely those contained in s. 23

of the *Charter*, which were at the same time given the status of a constitutional guarantee. (pp. 79) (Our emphasis.)

In its judgement rendered on March 15, 1990 in *Mahé et al. v. R.* respecting minority language education rights entrenched in section 23 of the *Charter*, the Supreme Court wrote as follows:

(1) Section 23 is one component in Canada's constitutional protection of the official languages. The section is especially important in this regard, however, because of the vital role of education in preserving and encouraging linguistic and cultural vitality. It thus represents a linchpin in this nation's commitment to the values of bilingualism and biculturalism. (Our emphasis.)

(2) The general purpose of s. 23 of the Charter is to preserve and promote the two official languages of Canada, and their respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population. The section aims at achieving this goal by granting minority language educational rights to minority language parents throughout Canada. Section 23 is also designed to correct, on a national scale, the progressive erosions¹⁶ of minority official language groups and to give effect to the concept of the 'equal partnership' of the two official language groups in the context of education. (Our emphasis.) [1990] 1 S.C.R. 342, pp. 344 and 350.

Remedying an unfair historical situation and its effects requires uniform remedies, and this task is, of course, the responsibility of the provinces, which are responsible for education under section 92 of the *British North America Act*, but also that of the Canadian government.

It follows that section 23, especially given its remedial nature, creates a positive obligation for not only the governments of the provinces and territories, but also for the Government of Canada, to act each in its own zone of responsibility so as to achieve the purpose of the section.

Consequently, each level of government, within the confines of its jurisdiction and prerogatives, has a duty to take the necessary steps to guarantee, as soon as possible, that parents can fully exercise the rights that have been conferred upon them by section 23 since April 17, 1982, and to achieve the object of section 23 and "to correct, on a national scale, the progressive erosion of minority official language groups".

¹⁶ The erosion in question here, which undermines self-esteem, is multidimensional, that is to say it is, among other things, psychological, social, institutional, economic, cultural and demographic — each of these dimensions strengthening the other — and its effects are cumulative.

2.4.2. Implementation of Section 23 of the *Charter*

When the *Charter* entered into effect in 1982, Quebec's Anglophone community enjoyed a complete system of English-language primary and secondary schools. In practice, it managed most of its schools through Protestant school boards, which it controlled across the province. Quebec's Anglophone minority also had an excellent system of colleges and universities. As a result, it enjoyed a complete system of educational institutions.

The Francophone and Acadian communities in the rest of the country are at a particular disadvantage in this regard. In the wake of the B & B Commission's work, instruction in French in the English-speaking provinces, which was illegal virtually everywhere until 1967, at least at the secondary level, began to improve in Confederation's centennial year. However, when section 23 of the *Charter* went into effect in 1982, half of the provinces and territories did not have a single solely French school.

If they had understood the issues and wanted to act in a responsible manner as government leaders, the federal, provincial and territorial governments had everything they needed as of 1984 to develop an overall plan to implement the minority language education rights they had entrenched two years earlier and to join forces to that end.

First of all, the B & B Commission had demanded this starting in 1967. Subsequently, there was a consensus, as all the first ministers subsequently undertook to do so in a declaration issued at the Montreal Conference in 1978. Then, the Supreme Court decision in *Quebec Association of Protestant School Boards* and the Ontario Court of Appeal's 1984 decision in the province's reference re section 23 defined the legal scope of section 23 sufficiently clearly that government leaders of good will could act.

However, the situation barely improved in these jurisdictions for eight years. It was not until the Supreme Court's judgement in *Mahé* on March 15, 1990 that the governments began to recognise official language minority education rights and to carry out their constitutional obligations.

In the nine majority English-language provinces and in the territories, Francophone parents, regardless of whether they formed endogamous or exogamous couples, were the people who could exercise these rights by registering their children at French schools.

As holders of constitutional rights to minority language education, they were virtually the only persons who could demand respect for those rights before the courts, which unfortunately proved to be necessary virtually across the country. In most cases, they

had to return to the courts two, three or even four times to have their rights recognised. This is the sad truth of the matter.

The very considerable progress achieved in implementing education rights across the country over the past decade is attributable to a large degree to the enlightened and unfailing efforts of Francophone parents. This progress is mainly the result of the efforts of a few clear-sighted, bold, tenacious and courageous parents¹⁷ who, despite the rejection they have encountered within their own families and social milieux and exhausting pressures from all sides, have persisted over the years in order to obtain justice before the courts. These parents and those who helped them are model citizens who should receive greater recognition for having devoted themselves to ensuring that Canada's Constitution is respected.

The current¹⁸ partial and inadequate implementation of section 23 of the *Charter* violates Francophone parents' right to move and earn their livelihood anywhere in the country. Furthermore, the often considerable discrepancies which still persist in the implementation of section 23 from jurisdiction to jurisdiction deprive them of their right to the same protection and benefit of the law, namely the *Constitution Act, 1982* itself. These violations of a fundamental right and freedom, which are the result of various violations of section 23, mainly affect Francophones.

In short, despite the progress made in the 1990s, particularly in obtaining French school boards, an enormous amount of work remains to be done. And the even partial achievement of an essential means to that end (school governance) must not be mistaken for the achievement of section 23's ultimate purpose.

¹⁷ In 1987, through the tenacity and acute political sense of these parents, as well as the fortunate intervention of certain politicians including Senator Simard, the Commission nationale des parents francophones and its member organizations received annual funding of \$1.8 million, a level which was subsequently reduced through budget cuts.

¹⁸ In August 1998, the Commissioner of Official Languages published a study entitled *School Governance: The Implementation of Section 23 of the Charter*. This study drew a picture of the status of minority language instruction and underscored numerous weaknesses which still persist in the implementation of section 23. In addition to being partial, the application of section 23 is inadequate because the necessary measures have not been taken to achieve its purpose, which is to correct the erosion of official language minorities, which would likely have made it possible to achieve the section's general object to the desired extent. For example, the demographic erosion, which is now in its seventeenth consecutive year in 11 majority Anglophone jurisdictions, has resulted, among other things, in a loss of constitutional rights to French language instruction for all future generations. This factor alone is sufficient proof that the implementation of section 23 is distinctly inadequate. Consequently, the appropriate education system, which the legislature should introduce without delay, according to the *Mahé* decision, is still lacking in most, if not all jurisdictions.

2.4.3. Achieving the Purpose of Section 23 of the *Charter*

Young school-aged Canadians whose parents meet one of the three conditions of eligibility for the minority language education rights guaranteed by section 23 of the *Charter* are considered entitled persons. French schools should obviously be the preferred instrument for the francisation, education and cultural internalisation of entitled persons. The number of persons entitled to education in French is approximately 260,000, children aged six to 17 living outside Quebec who have at least one parent (Canadian citizen) whose mother tongue is that of the minority.¹⁹

However, nearly one half of these entitled persons²⁰ are still enrolled in English or immersion schools. Upon leaving school, these young Canadians will be deprived of the rich cultural heritage of one of their parents and will be unilingual Anglophones. In addition, all their descendants will be, like them, forever deprived of the constitutional right to have their children educated in French schools.²¹

Those who are convinced that the struggle over schools is a thing of the past should think again. And politicians who pat themselves on the back should review their programs and implement the measures called for by Canada's legislative and constitutional framework to correct the situation.

It is very important that the parents of entitled persons be well informed as soon as possible as to the implications and consequences of the choices they make concerning the schools where they register each of their children. These decisions must be taken in an informed manner and of a common accord by both parents, particularly where the couple is exogamous, that is to say formed of one Francophone parent and one Anglophone parent. These decisions are that much easier to take when parents have access to a French school in their community and where the school, and the authority governing it, have managed to establish their credibility and demonstrate their professionalism publicly. An institution's credibility is based on the quality of its buildings, equipment, academic and extracurricular programs and educational services.²²

¹⁹ Angeline Martel (1991). *Official Language Minority Education Rights in Canada: From Instruction to Management*, Ottawa, Office of the Commissioner of Official Languages, p. 369.

²⁰ This means that nearly 130,000 entitled persons are enrolled at English or immersion schools. The cohort of entitled persons studying in immersion obviously artificially inflates the number of Anglophones studying French of which the Department of Canadian Heritage is so proud. This figure is presented as proof of the positive effect its official languages policy is having on education, but, in reality, it may reflect the fact that Francophones are being deprived of their rights.

²¹ See section 5.2, which addresses the distortion of cultural identity.

²² The construction of a new school in Yellowknife had the effect of virtually doubling student numbers in a single year. The same effect occurred across the country when viable establishments were opened. Governments must understand the effects of their offloading in all areas of communities' lives and commit to compensating communities for reprehensible delays in the implementation of section 23 of Part VII which have caused such significant damage and losses.

The situation is more critical in the case of families where French is not the main language of communication in the home. We know that one-half of entitled persons in the country are from exogamous couples. These children need the support of French day care, pre-kindergarten, and kindergarten in order to improve their French before they are admitted to French schools. Otherwise they will need preparatory classes in the early grades in order to enter regular classes starting in grades three or four.

- 1. We recommend that the federal government, jointly with provincial governments, and in association with the new Francophone school authorities, quickly design and implement a broad strategy for registering eligible children currently deprived of their constitutional rights in French schools.**

All these measures are necessary to achieve the purpose of section 23, and they must also be paid for out of public funds to provide some small remedy for the effects of mandatory English public schools which alone have been paid for out of public funds for more than a century. These measures are in addition to the implementation and adequate funding of a complete, well-equipped system of Francophone elementary and secondary schools of high quality, control of which, with respect to language and culture, would fall exclusively to the parents of eligible children of the minority concerned. The fundamental mission of each of the schools in this system should be to correct the multidimensional erosion of the culture in its socio-cultural environment. With the necessary resources for this purpose, each school should see to it to carry out this mission in its own area.

- 2. We recommend to each of the French school boards that they undertake to correct the erosion of the Francophone minority by adopting a clear overall strategy to this end in each of its schools and that it provide the appropriate framework and support for that purpose.**

This is clearly not the case today, despite the fact that this is a constitutional right that has been in effect for more than 17 years and despite the fact that, nearly 10 years ago, the Supreme Court of Canada exhorted governments to legislate without delay and to act diligently to put into place an appropriate implementation regime.

The purpose of section 23, as interpreted by the Supreme Court of Canada since 1990, is *to correct, on a national scale, the progressive erosion of minority official language groups in Canada.*

Rigorous analysis of the situation leads to another central conclusion: there is not a single province where available data enable us to conclude that a serious start has been made to slow the multidimensional erosion of the Francophone community, much less

to correct its cumulative effects. The linguistic continuity index, for example, unfortunately fell from 73 per cent in 1971 to 64 per cent in 1996.

Consequently, the purpose of section 23 is far from being achieved and this fundamental right is far from being respected.

In light of past experience, one might conclude that judicious legal action undeniably remains the only way to establish a power relationship that could cause the two levels of government to commit the resources required to achieve the purpose of section 23, to which they themselves have decreed the status of a fundamental right and constitutional guarantee.

However, since partnership is in vogue these days, it should not be necessary for parents and communities at this stage to be obliged to undertake more coercive actions to motivate both levels of government to make the necessary efforts and provide the necessary resources, and act together to implement a satisfactory overall plan developed in consultation with the parties concerned.

We are encouraged by the *Pan-Canadian Educational Project* (PEP) developed by the *Consortium francophone de l'éducation* [Francophone Education Consortium], the coalition of nine national education partners operating in cooperation with the Council of Ministers of Education Canada (CMEC) and the Department of Canadian Heritage. PEP is a project in which independent partners pool resources and achievements in order to promote educational activities fostering the full development of the French language and Francophone identity of students in Canada. PEP could ultimately provide all French schools with the impetus to adopt the mission to reverse the erosion in their respective areas and secure the resources to carry it out diligently.

Progress in this direction, however, is too slow, and resources are distinctly inadequate. There is too much reliance on volunteer work and this fundamental vision of the country's future does not receive enough attention from Canadian government leaders. Moreover, the Government of Canada, whose Official Languages in Education Program (OLEP) has scarcely been modified since 1969, despite the introduction of section 23 of the *Charter*, has not yet introduced programs consistent with its constitutional obligations in this area.

The federal government has a duty to use its spending power to provide the community directly with the resources its system of associations and institutions needs to participate fully in achieving the object and purpose of section 23. Reversing the gradual erosion of the minorities is a vast undertaking which of course requires the active, sustained and coordinated participation of the provincial and territorial governments as well as that of the Government of Canada, with each acting within its own sphere of authority. This undertaking also requires the participation and mobilisation of the forces of the community itself because it must be fully recognised

that governments are reluctant to take the necessary action. Governments must nevertheless support the communities and their actions out of "public funds".

The success of instruction in French in minority French schools is closely linked to the status that language enjoys and its profile in the surrounding community. The success of the French schools' educational efforts thus depends to a significant degree on the implementation of Part VII by the federal government. Seen in this light, it depends in particular on the degree to which the objective stated in section 41 of the *Act*, which is to promote the equality of status and use of French and English, is achieved. As a result, the more French is maintained in a situation of inferiority by governments, the greater the obstacles that French schools will experience in carrying out their mission and achieving the purpose of section 23 of the *Charter*.

In his 1997 Annual Report, the Commissioner of Official Languages painted an unflattering picture of the federal government's implementation of Part VII of the OLA:

In evaluating the effects of the government's actions (and omissions) with regard to achieving the two fundamental objectives of Part VII, bearing in mind the impact of successive budget cuts, of the restructuring of departments and programs and of privatisation, decentralisation and transfer of responsibilities, we must conclude that Part VII was generally left aside in the decision-making process. The impact, for instance, with regard to Part VII, of reducing parliamentary appropriations to the CBC and of transferring labour market development programs to the provinces and territories could be substantial. In short, there is no indication of greater federal government support for community development compared to either 1994 or 1988.²³ (Our emphasis.)

With the exception of the Court Challenges Program, which the government extended and which had significant positive effects in achieving the purpose of section 23 and the objectives of Part VII, all other measures taken for similar purposes have been of limited scope and have had very limited effects. Moreover, the resources allocated to OLEP have been reduced, even in current dollar terms, each time the program has been renewed since the *Charter* went into effect in 1982.

In fact, the federal government's support for the vitality of the communities and recognition and use of French and English has scarcely increased since 1982, despite the very significant reinforcement of Canadians' language rights and a major increase in government commitments and obligations under the *Charter* and the *Official Languages Act, 1988*, a quasi-constitutional statute. Provincial governments are even more parsimonious in their support.

Appropriate corrective measures are required now!

²³ Commissioner of Official Languages, *Annual Report*, Ottawa, 1997, p. 19.

3. We recommend that the Government of Canada provide itself with the means to meet its legislative and constitutional education obligations:
 - (a) by linking transfer payments to the provinces to full execution of the obligations dictated by section 23 of the *Canadian Charter of Rights and Freedoms*;
 - (b) by re-crafting the purpose and parameters of the Official Languages in Education Program (OLEP);
 - (c) by increasing funding allocated to minority French education to a sufficient level to stop the erosion of the Francophone and Acadian communities.
4. We recommend that the governments of the nine Anglophone provinces and territories allocate resources commensurate with their legislative and constitutional obligations by drawing on their public funds, outside the OLEP envelope, to fund the programs required to correct the erosion of Francophone and Acadian communities, a phenomenon largely attributable to the assimilating policies they have practised for more than 100 years.

2.5. Assessment of Thirty Years of Linguistic Development

In 30 years of linguistic development, which began with the (partial) implementation of the B & B Commission's recommendations, the status and use of French have made considerable, albeit insufficient and tenuous, progress. Today, Canada's statutory and constitutional commitments to the equality of status of French and English and to the development of the minority official language communities make for a brighter picture.

Parliamentary and legislative bilingualism is moderately widespread:

- ☐ French and English may be used in the debates, proceedings and sittings of the Parliament of Canada and in the legislatures of Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, the Northwest Territories, Nunavut and the Yukon, and both languages must be used in the statutes, records, minutes and journals of each of those jurisdictions;
- ☐ French may be used in the same way as English in the debates, proceedings and sittings of the legislatures of Saskatchewan and Alberta.²⁴

²⁴ Although this is very rare.

Formal bilingualism is also widespread in the country's courts:

- ☐ the right to use French or English in criminal trials is recognised across the country;
- ☐ this right is universally recognised in civil proceedings as well, at least before designated courts, except in Newfoundland, Nova Scotia and British Columbia.

Bilingualism in public services is recognised in much of Canada:

- ☐ the right to receive services in French outside Quebec is recognised at the federal level and in Prince Edward Island, New Brunswick, Ontario, the Northwest Territories, Nunavut and the Yukon;
- ☐ the right to receive social and health services in English is recognised in Quebec;²⁵
- ☐ regular meetings have been held between the officers responsible for provincial minority language services at the administrative and ministerial levels, attended by most provinces and territories.

Canadians can have their children educated in their official language at the primary and secondary levels:

- ☐ the right to minority language education (section 23 of the *Canadian Charter of Rights and Freedoms* of 1982) is recognised by the Supreme Court of Canada and is gradually being implemented across the country. As a result, there is a virtually complete system of minority language schools, managed in large part by the parents and the community, in most of the provinces and territories responsible.

A number of other measures have been taken to respect and reflect Canada's linguistic duality:

- ☐ the *Broadcasting Act* ensures that the French radio and television services of Société Radio-Canada are available in virtually all regions of the country and also supports the French services of private broadcasters;
- ☐ the *Consumer Packaging and Labelling Act* ensures that French is visible and useful across the country;

²⁵ Unfortunately, this right is virtually non-existent elsewhere, even in Ontario, where the current government has eviscerated the French Language Services Act (Bill 8).

- ❑ any person whose constitutional equality rights and language rights are violated or denied may apply to a competent tribunal for remedies which that tribunal may consider appropriate and fair in the circumstances;
- ❑ the *Official Languages Act*, 1988 reinforced Canadians' language rights and the obligations of the federal government. Part VII of that *Act* confers a duty on the government to promote the equality of French and English in Canadian society and to actively support the development of the communities. The powers of the Commissioner of Official Languages were strengthened and the *Act* provides for fairly easy access to the Federal Court of Canada with the Commissioner's support;
- ❑ the Court Challenges Program, which enables the federal government to provide financial support for language cases, provides greater access to court remedies in upholding constitutional language rights (the program was abolished in 1990, then restored in its key aspects in 1993);
- ❑ a Francophone association of municipalities has been established in New Brunswick, Ontario and Manitoba, thus making it possible to consolidate the presence of French and to facilitate the adoption of municipal decisions guaranteeing French language services in municipalities with large Francophone populations;
- ❑ a system of French post-secondary educational institutions and so-called bilingual university institutions,²⁶ supported by both levels of government, provides a certain range, albeit an incomplete one, of French programs at the college and university levels in Nova Scotia, Prince Edward Island, New Brunswick, Ontario, Manitoba, Saskatchewan and Alberta;
- ❑ French as a second language and French immersion school programs supported by both levels of government have made it possible for young English Canadians to learn French.

²⁶ We should qualify our remarks here: the so-called bilingual universities are in fact only partially bilingual. Even the University of Ottawa, which is deemed to be the leading bilingual university, leaves much to be desired in the quality of the French-language resources it makes available to students and in the calibre of French of a number of its teachers in many faculties, which explains the Franco-Ontarian community's demands for a university.

2.6. A Work Left Wanting

2.6.1. Linguistic Inequities

There is real progress and the above list of achievements is impressive. Canadians' language rights and the protection of French and official language minorities have been considerably strengthened over the past 30 years thanks to the resilience and ardent efforts of the communities. However, the implementation of these rights by the governments responsible is far from complete, and genuine equality between French and English and genuine equality of opportunity for majority Canadians and minority Canadians have not yet been achieved and the situation remains unfair and deficient in a number of respects:

- ❑ the equality of French and English is still only nominal to a large degree as language statutes, in their letter and spirit, have only been partially implemented, as we are constantly reminded by the linguistic landscape²⁷ in which we live;
- ❑ the French school boards that do exist are under-funded, and virtually no French schools have the resources to realise the fundamental mission of achieving, in their area, the purpose of section 23 as interpreted by the Supreme Court of Canada, which is "to correct, on the national scale, the gradual erosion of the minorities...". Currently, nearly half of the children entitled to attend French schools across the country are enrolled in English-language or immersion schools;
- ❑ year after year, the minority Francophone and Acadian communities derive fewer benefits from government programs as a whole, at all levels of government, than the linguistic majority²⁸ (e.g., social and health services programs, education, vocational training, human resources and labour market development, direct and indirect support for regional economic development and agricultural development, fisheries and tourism and the creation, expansion and financing of businesses that can serve as a foundation for the communities' economic development, etc.). This is even more so in the case of the actions of

²⁷ People intuitively adjust their behaviour as they perceive themselves to be in a Francophone or Anglophone area in accordance with the status and use of French and English to which they see and hear around them in signage, electronic and print media, conversations, etc., which all too often confirms the situation of inferiority in which the French language finds itself.

²⁸ This may be explained by the fact that programs are generally designed and managed on the basis of the characteristics and needs of the majority, a reality which can change only if the specific characteristics and needs of the official language minority communities are integrated at all decision-making levels.

provincial and municipal governments, as the Commissioner of Official Languages clearly established in his investigative report published in 1996 on the federal government's implementation of Part VII of the *Official Languages Act*, entitled *A Blueprint for Action*;

- ❑ successive budget cuts in the 1990s, the restructuring of departments and programs, privatisation and the transfer of federal powers to the provinces and from the provinces to the municipalities have had, and still have, a significant negative impact on the vitality of the communities;
- ❑ paradoxically, the second wave of nominal commitment through the principles of the *Constitution Act, 1982* and the *Official Languages Act, 1988* coincided with first levelling off of funding at the federal level, then gradual withdrawal in concrete and financial terms²⁹ with respect to the promotion of official languages and the development of the communities;
- ❑ certain provinces including Ontario used this federal government withdrawal as justification for offloading their responsibilities, which resulted in a disturbing disappearance of previous gains;
- ❑ by giving too little effect to their formal commitment to guarantee access to services in French, to promote the use and equality of status of French and to support the development of their official language minorities, governments, including the federal government which should set the example and show leadership, often inadvertently weaken the French language, Francophone communities, linguistic duality and Canada itself.

The governments' formal commitment confers a legitimacy of the highest value on all Francophone and Anglophone minority Canadians. Language rights for them constitute invaluable official recognition. The most striking example of this is undoubtedly the unanimity rule which prevails for Parliament and all legislatures for every constitutional amendment that might diminish language rights and which thus places these language provisions at the top of the hierarchy of statutes in Canada. However, it must ultimately be acknowledged that what counts is the reality shaped by respectful and consistent action, or the lack of it.

²⁹ In his 1997 Annual Report, the Commissioner of Official Languages assessed the situation in the following terms: "In short, there is no indication of greater federal government support for community development compared to either 1994 or 1988." (p. 19)

2.6.2. Entrenchment of Language Rights and Provisions in the Constitution

We have noted above that the B & B Commission recommended in the late 1960s that Ontario, Quebec and New Brunswick, where 95 per cent of members of official language minorities live, should become institutionally bilingual. It also recommended that the other seven provinces provide their minorities with services in French where justified by local concentrations in population.

We noted above that all premiers undertook to entrench parliamentary, legislative and judicial bilingualism in the Constitution at the constitutional conference in Victoria in 1971.

We also observed that the Supreme Court of Canada emphasized in its August 1998 decision in *Reference re Quebec Secession* "that the protection of these (minority) rights is itself an independent principle underlying our constitutional order".

In light of the fundamental issues surrounding the constitutional obligation "to correct, on a national scale, the gradual erosion of the minorities" and of the urgent national need to do so, we think it is imperative to take extensive new measures to consolidate the foundations of our national identity.

- 5. We recommend that all the provinces entrench in the Constitution the current legislative and political provisions respecting parliamentary, legislative and judicial bilingualism, with a view to extending and reinforcing them, and undertake to provide their services in the minority language (as some are already doing to a certain degree) in compliance with section 20 of the *Canadian Charter of Rights and Freedoms*.**

2.7. Breadth and Depth of Part VII of the *Official Languages Act*

Part VII of the *Official Languages Act*, 1988 marked a major step in the development of language rights and the protection of minorities. It also provided for a new type of right whose collective nature is important and whose general character in no way reduces the compelling nature of its obligations. Section 41 of Part VII reads as follows:

The Government of Canada is committed to enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development, and fostering the full recognition and use of both English and French in Canadian society.

2.7.1. Legal Ramifications of Part VII

Part VII of the *Official Languages Act*, 1988, which gives effect to subsection 16(3) of the *Charter*, and whereby Parliament clarified the meaning and scope of subsection 16(1), in the same way as Part IV is an instrument for the implementation of Section 20 of the *Charter*,³⁰ also creates a related positive obligation for the federal government "to remedy the erosion of the linguistic minorities" to the extent it is able to do so.

It is important to clarify the meaning of the expression "to the extent it is able to do so". It refers in particular to the government's power to legislate, to each of its programs, to its spending power, its resources and its influence. In each case, its action must be designed to achieve the object and purpose of Part VII of the *Act*, unless of course it cannot have any impact whatever, even indirect, on that achievement.

In June 1995, based on legal opinions he had received and previous decisions on language rights by the Supreme Court of Canada, the Commissioner of Official Languages defined the scope of Part VII of the *Official Languages Act* as follows:

While the means contemplated under the "Minority Language Educational Rights" guaranteed under section 23 of the *Canadian Charter of Rights and Freedoms* differ considerably from those contemplated under Part VII of the *Official Languages Act*, the purpose and objectives of Part VII of the *Act* are the same as those of section 23 of the *Charter*, as interpreted by the Supreme Court of Canada in *Mahé et al. v. R.*, [1990]. The general purpose of Part VII of the *Act* is to preserve the two official languages of Canada and the cultures they represent and to promote the vitality of each of these languages, as far as possible, in the provinces where it is not spoken by the majority of the population, by enhancing the vitality of the communities that transmit it. This Part of the *Act* is also designed to correct, on a national scale, the progressive erosion of minority official language groups and to give effect to the concept of the equal partnership of the two official language groups in the areas of activity of the Government of Canada.

Part VII seeks to achieve this aim by binding each federal institution, in the exercise of its mandate and the implementation of its objectives ... Like Section 23 of the *Charter* concerning "Minority Language Educational Rights", which it complements, Part VII recognizes that the status of the official

³⁰ Subsection 16(1) of the *Charter* provides that "English and French are the official languages of Canada". Subsection 16(3) contains the principle of "advancing the equality of status or use of English and French", and section 20 provides for the public's right to communicate with and receive services from federal institutions.

languages throughout the country depends on the vitality of the minority communities who speak these languages.³¹

2.7.2. Meaning of Part VII

Seen from this standpoint, this means that the federal government has a constitutional duty to do everything in its power to ensure complete implementation of section 23 of the *Charter*,³² given, first, how critically important it is for Canada's future as an entity to achieve the object of section 23, second, the obligations conferred on it by section 16 of the *Charter* and Part VII of the *Official Languages Act* and, third, the specific responsibilities incumbent upon it as the Government of Canada and the only government of all Canadians to ensure the continued existence of the Canadian federation.

In particular, the Government of Canada specifically has a duty not only "to correct the (multidimensional) erosion of the minorities", but also to promote their vitality and actively support their development so as to strengthen an important (and the most fragile) part of the foundation of Canada's linguistic duality. In so doing, it would also strengthen Canada's national identity and prospects for unity.

Many French-speaking Quebecers, those who have ceased to define themselves as French Canadians, find it very difficult to identify with Canada. The reason for some is that there are too few places in the rest of the country outside Quebec where it is possible for them to live in French as full-fledged citizens. In particular, this means being able to raise their children and have them educated in an environment that enables them to transmit their language, culture, identity and heritage to them without them becoming impoverished. This also means that their children must be able to live normal lives and see their identities reflected in their socio-cultural environment.

Efforts to maintain Canadian unity will prove fruitless unless Part VII is implemented fully and very soon.

³¹ Commissioner of Official Languages, *A Blueprint for Action: Implementing Part VII of the Official Languages Act*, 1988, Ottawa, February 1996.

³² And yet, according to data made public by the Minister of Canadian Heritage in her announcement of the recent extension of the Official Languages in Education Program, payments to provincial and territorial governments during the period from 1998 to 2003 will be reduced by 42 per cent compared to those between 1988 and 1993.

2.7.3. Issues Germane to Part VII

The above informs us on the issues relating to Part VII as defined by the Commissioner of Official Languages as well as the national urgency of achieving its goal.

The Commissioner has described the issues of Part VII of the *Official Languages Act*, 1988 as follows:

The purpose of Part VII is to do justice to the official language minority communities, which are disadvantaged relative to the majorities since they do not derive all the benefits to which they are fairly entitled from federal policies and programs. Since the purpose of Part VII is to correct this situation and to ensure the communities receive equitable treatment, the federal institutions must revise their policies and programs, including the way in which they are designed, approved and implemented.

Part VII is intended to afford all Canadians the opportunity to live in English or in French in their country. It must therefore be ensured that the minority communities have access to government services, education, employment, culture and recreation in the language of their choice.

In the spirit of Part VII, all Canadians, Anglophone and Francophone, should feel they are full-fledged citizens. However, most Canadians are unilingual. If they have to settle in another region of Canada, they should be able to find there a dynamic official language minority community which ensures the vitality of their language and offers them a familiar environment which enables them to fit in more easily.

Part VII affirms Canada's identity. Its implementation is essential for the official language minority communities, important for the linguistic majorities and vital for the future of our country.³³

Since September 15, 1988, if not since the coming into effect of Section 16 of the *Charter*, all federal programs and the federal spending power have been subject to the achievement of the purpose of Part VII and of the two objectives stated in Section 41 of the *Act*, as well as the spirit and all the provisions of Part VII.

³³ Commissioner of Official Languages, *Evaluation Report for the First Generation of Action Plans for the Implementation of Part VII of the Official Languages Act of 1988*, Ottawa, May 1996.

2.8. Canada May Yet Be Living the Worst Crisis in Its History

Part of this hard reality is the fact that the official language minority communities must often resort to the courts, including the Supreme Court of Canada, to have their rights recognised and honoured, even those guaranteed by the *Constitution Act*. The right to minority language education, demanded by the B & B Commission in the late 1960s as part of the foundation of its action plan to enable Canada to pull through the worst crisis in its history, and granted on April 15, 1982 in the *Canadian Charter of Rights and Freedoms*, is even today, at the dawn of a new millennium, subject to interminable court challenges to avoid remaining inoperative.

This is a curious way for governments, the signatories of the *Constitution Act, 1982* which are bound by the language and education rights and obligations which it guarantees, to promote the recognition of English and French as the official languages of Canada and to support the development of the Anglophone and Francophone minority communities essential to the maintenance and development of Canada.

It seems that court challenges will still have to be initiated in order to make people understand and respect the entire scope of acquired rights and of the linguistic obligations of the governments, particularly in light of the Supreme Court of Canada's statement in the decision it rendered on May 20, 1999 in *R. v. Beaulac*: "Language rights must in all cases be interpreted on the basis of their object in a manner consistent with the maintenance and development of the official language communities in Canada." (p. 3) (Our emphasis.)

And yet, the policy of "too little, too late" may be much more dangerous than many government leaders and Canadian society leaders seem to suspect. It may cause some Canadians to lose patience. On the day of the next referendum on Quebec sovereignty, would it not suffice for a few thousand Quebecers, exasperated by the rest of Canada's rejection, even passive rejection, of their language and cultural identity, to decide suddenly to change their minds and move to the yes camp, thus altering the structure of Canada? This would inexorably and irremediably change the lives of all Canadians!

This social plan for equality of opportunity between majority and minority and full recognition of English and French as the official languages of Canada as entrenched in Section 16 of the *Constitution Act, 1982* are priorities and must be implemented without delay. At the dawn of the new millennium, the development of the communities has become a national urgency!

A well-balanced society, and its governments, must fully grasp the implications of its past in order to meet the challenges of its future.

2.9. Constitutional Duty of the Canadian State

The linguistic and cultural continuity of the Francophone linguistic minorities in Canada clearly is not guaranteed. The renewal, development and vitality of these communities is not a given, any more than full recognition and equality of use of English and French in Canadian society.

2.9.1. Sections 16 and 23 of the *Charter*

The decline in the index of linguistic continuity³⁴ of the Francophone minority in Canada, which was higher in the 1980s than in the preceding decade, merely confirms the urgent need for all the components of the Canadian state to allocate the necessary means to fully implement the purpose and object of sections 16 and 23 of the *Charter*.

Sections 16 and 23 of the *Canadian Charter of Rights and Freedoms* of 1982 and the *Official Languages Act*, more particularly Part VII, are of national scope and purpose. Achieving their purpose will have a decisive impact on Canada's identity, national unity and the future of all Canadians. Taken together, these provisions create a positive obligation for the Canadian State to act quickly to achieve their purpose.

On pages 5 and 6 of his 1998 Annual Report, the Commissioner of Official Languages demonstrates that the strategy for implementing Part VII of the *Act*, more than 10 years after it went into effect, is inadequate throughout the government as a whole. He lays out the path for the Cabinet, which is responsible for correcting the situation.

In an internal study commissioned by the government itself, consultant Donald J. Savoie, whose competence and reputation are established, paints a picture of the government's achievements that is scarcely any brighter than that offered in these pages.³⁵

In short, there can be no doubt that the federal government has failed in its duty and has not fulfilled its statutory or constitutional obligations, namely the undertaking Parliament consecrated in Part VII of the *Official Languages Act* more than 11 years ago.

³⁴ Although we have some reservations about the validity of this index, we currently have no better instrument for measuring change in this area.

³⁵ Donald J. Savoie, *Official Language Minority Communities: Promoting A Government Objective*, Report prepared at the request of the Department of Canadian Heritage, the Treasury Board Secretariat and the Privy Council Office, November 1998, 69 pp.

2.9.2. Clarification Provided by *Reference Re Quebec Secession* Respecting Minority Language Rights

For minority language rights to be implemented, should it not be sufficient for the Supreme Court of Canada to recognise that they have the status of one of the four fundamental principles underlying Canada's constitutional order?

And yet, this is precisely what the Court did in its August 1998 judgement in *Reference re Quebec Secession*:

It is necessary to make a more profound investigation of the underlying principles animating the whole of the Constitution, including the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities. Those principles must inform our overall appreciation of the constitutional rights and obligations ... (p. 3)

However, we highlight that even though those provisions were the product of negotiation and political compromise, that does not render them unprincipled. Rather, such a concern reflects a broader principle related to the protection of minority rights. Undoubtedly, the three other constitutional principles inform the scope and operation of the specific provisions that protect the rights of minorities. We emphasize that the protection of minority rights is itself an independent principle underlying our constitutional order. The principle is clearly reflected in the *Charter's* provisions for the protection of minority rights. See, e.g., *Reference re Public Schools Act (Man.)*, s. 79(3), (4) and (7), [1993] 1 S.C.R. 839, and *Mahé v. Alberta*, [1990] 1 S.C.R. 342. (Our emphasis.)

We dare hope that the Government of Canada will adopt extraordinary measures to actualise the constitutional principle that is respect for minorities and that it will draw the provincial and territorial governments in its wake.

3. Key Indicators of a Normal, Viable and Vibrant Community

To gain a better grasp of the various aspects of this entire issue, including a clearer appreciation of the discrepancies and an understanding of what should be done, it is essential to determine the main characteristics of a normal vibrant community, even if it is a minority community. Francophones living outside Quebec may energise their values, culture and language and thus make a decisive contribution to Canadian society to the extent which, in collective terms, they form part of a vibrant and viable community.

3.1. Critical Mass

The first indicator of a vibrant community is critical mass, that is the critical mass formed by a community sufficiently powerful to act as an integrating force for its members and new arrivals, while exercising a measurable influence on the social, cultural, political and economic dynamic of the surrounding society. For example, the Anglophone community in the Metropolitan Montreal region exercises an exemplary force of attraction on its members and on new arrivals, while vigorously influencing the dynamic of the surrounding society in all respects.

The notion of critical mass includes a high level of social cohesiveness such that a community with small numbers but an acute sense of its own identity and place under the sun is able to secure the means for its own development. This notion exceeds the limits of geographical territory and includes the cultural communities scattered across all regions of the country. The Jewish community is a good example of this. Despite the fact that it is very small in many regions of the country, it has maintained its cohesiveness, established an exemplary infrastructure and made its presence and influence felt at the most varied and highest levels of Canadian society. It is also very skilful in ensuring it receives its share of the Canadian State's benefits. This vitality stems from the strong sense of identity, collective identification and pride and tenacity that this community has been able to refine over the centuries.

The notion of critical mass does not necessarily involve large numbers, but rather the ability to extend its cultural influence and collective power internally and throughout the surrounding society. Some very small communities have an influence on the society around them that is far superior to what much larger communities can exercise. Energy, commitment and vitality are thus essential features of this growing critical mass. The Annual Maillardville Festival in British Columbia illustrates this point by its ability to render la francophonie visible to the majority and thus to alter its vision of Canada. The 1994 Acadian World Festival significantly changed the New Brunswick

Anglophone majority's perception of the Acadian community and its contribution to the well-being of all New Brunswickers.

3.2. Visibility

A viable and vibrant community is visible, easily recognisable and identifiable by its values, customs, socio-cultural events and language. Its presence is powerful enough to register on the collective awareness of the surrounding society and to become an important and valued component of it. Through its creative artistic force, the community manages to express the essence of its specificity, while continually renewing and recreating its cultural identity and thus enriching the cultural identity of the surrounding society. It becomes both a powerful force and a source of pride for the region as a whole.

This cultural affirmation enables the members of the community not only to recognise themselves, but to identify ideas and sentiments expressed that enable them to shape a sense of their own lives in a modern context. This is a dynamic and contemporary culture, which reflects the present experience and aspirations of its members rather than a folkloric culture imbued with nostalgia for another era. Cultural affirmation fosters the formation of a balanced and well-rooted individual identity and the development of a strong sense of belonging to the group identity, not to mention the emergence of pride in its characteristics and collective accomplishments.

3.3. Normalising the Act of Living in French

The characteristics of a viable and vibrant community include the ability of and opportunity for its members to live in their language. Culture thus becomes more than a storage closet of folkloric memories: it is on display and affirmed. The members of this kind of community perceive themselves as normal people who deal with each other in their language; for them, affirming their culture constitutes normal and natural behaviour.

They do not really feel the effect of the psychological dissociation caused when their socio-cultural environment becomes so overwhelming that it leads them to renounce their cultural framework, thus trampling their sense of "self". On the contrary, they feel legitimised and fulfilled by taking an active part in their community. This also applies to children, who experience no difficulty matching their cultural identity to their sense of what is normal.

They find this a suitable arrangement and a vital reason for existence. Their community is that place where their personality and passions flourish, where they have a right to

speak, where their cultural identity grows, where their centre of gravity is consolidated and where their right to exist is not only confirmed, but celebrated.

3.4. Service and Infrastructure Critical Thresholds

There are critical threshold levels³⁶ for services and organisational infrastructures which offer their community the instruments of its development and vitality. These critical thresholds apply to all sectors of contemporary life, including health, communications and economic development, not only education and culture. They include the existence of a network of institutions in the fields of health, employment, literacy, education and post-secondary education, continuing training, economic development and cultural development. These institutions must control sufficient resources to permit the delivery of a full range of developed, high-quality services based on the specific characteristics of the communities.

3.5. Access to the Levers of Political Power

A viable community has the means to make its presence felt in the public arena, thus acting on the dynamics of power and on the political decision-making process which shape its social environment. It thus has the ability to elect representatives and take an active part in the political system. It also has the ability to take charge of itself and to develop political weapons to gain equitable access to the levers of power.

3.6. A Vibrant Economy

A viable community has a sufficiently vibrant economy to ensure its subsistence and development, involve its youth, integrate new arrivals and enable it to assert its role in the surrounding economy. It has a sufficiently broad and dynamic pool of economic players to sustain and direct a vibrant economy. It controls sufficiently large financial resources and has developed access channels to sources of funding and investment. Its economic gains and expertise are so strong and refined that it becomes a driving force for the surrounding economy.

The vitality of the communities necessarily derives from their economic dynamism. The economic development of modern societies depends to a large degree on the existence of advanced expertise whose contribution is generally channelled through the universities and scientific research, as may be seen from the centres of excellence and innovation at Canadian universities.

³⁶ By critical thresholds, we mean service levels below which a community or individuals cannot hope to develop.

These principles apply to the official language minority communities (OLMC). However, they often lose out in this area because they have too few post-secondary institutions and even less in the way of scientific research infrastructure. Today, however, wealth creation comes mainly from high-tech industries, knowledge industries and exports.

3.7. Communications Systems

A viable community possesses and has access to communications systems such as newspapers, radio and broadcasting, the information highway and other new communication technologies which enable its members to talk to each other, see each other, and be seen by society at large. These means of communication are adapted to the community's geographical structure and cultural specificity. The members of the community have a sufficient degree of governance over these systems to ensure they effectively act as vessels for vitalisation and influence, linking and nourishing all the organs and extremities of the community.

3.8. Majority Recognition

A viable minority community is valued by the surrounding communities and thus by society in general. Not only are its existence and legitimacy not questioned, it is also perceived by society in general as a fundamental part of its social fabric which is valued as one of the driving forces behind the development of society as a whole, as a source of intrinsic richness, a source of inspiration and a fundamental part of the collective identity. Society at large perceives a viable minority community as an indissociable part of itself. It affords it the respect worthy of a symbiotic relationship and grants it, willingly and out of principle, the means to maintain its vitality in recognition of its contribution. In short, society in general conceives that the vitality of a viable community is in its own interests and that any strengthening of that community contributes to the vitality of society as a whole.

In this report, we challenge the Canadian political class as a whole to design and implement a rigorous strategy consisting of a sufficiently strong set of statutes, policies and programs to enable all Francophone and Acadian communities to rise to the level of viable community. This change can only be realised through a clear vision of government responsibility consistent with the country's constitutional framework and through an energetic demonstration of its political will.

3.9. Equity and Civility

The force of a viable and vibrant community depends on its degree of social cohesion, which in turn depends on the degree of equity and civility found in its ranks. We use the word civility in the sense of respect, which is the basis of a civilised society and of a civilisation's progress. Equity means equality of opportunity in all types of pursuits, thus permitting the complete exercise of citizenship, the second pillar of an advanced civilisation.

Equity and civility are manifested through a range of principles, reference systems and indicators. They can be recognised in societies where all citizens have access to reasonable living conditions, including the opportunity to provide for their basic needs, and where those citizens have, and are convinced they have a genuine right to be established in those societies. All these sub-components of society possess, and perceive themselves as having, the instruments for their survival and development. Women have taken their rightful place; the community recognises that they have the same rights as men and provides them with the necessary access to those rights. Young people have the right to dream of a promising future and to contribute as full-fledged citizens to the architecture of their society; the community provides them with the resources and means to do this. The elderly are recognised for their essential contribution to the community's development and have the financial, social and medical means to live well. Ethnocultural groups are welcomed and are able to participate fully in community life. The literacy rate is very high, full employment is a target and being achieved, and the difference between the disposable incomes of the very well-off and the least well-off is gradually narrowing.

3.10. Symbolism and Mythical Framework

Every viable and vibrant community has a set of symbols and myths which enable its members to see themselves and affirm themselves individually and collectively. It also has its rituals, festivals and major cultural and sporting events. It has a duty to continually adapt its symbols and myths in order to reflect and help, to a certain degree, to fashion its changing reality. Where those symbols and myths are lacking, it is up to that community to create and develop them.

Every community has its heroes and heroines. Unfortunately, the minority communities do not always acknowledge them, or not to a sufficient degree. By community recognition, we do not mean merely awarding medals. Heroic acts are carried out every day by people who will never be seen on a podium or television screen. Many of them have devoted their entire lives to work that vastly improves the community's viability or the living conditions of its members. The community must seek them out

and celebrate them in order to build a set of models which its members can draw on, thus making a major contribution to the collective pride and sense of success.

3.11. Cultural Power

Ultimately, the fate of communities depends on the power they are able to wield over their environment and the control they can exercise over the factors contributing to their development and cultural expression. *This cultural power includes the ability that a cultural group has to transmit current, potential and preferable beliefs and practices to its own members and society as a whole.*

Cultural power is a function of critical mass, social cohesion and sufficient social and institutional infrastructure. Viable communities have a clearer sense of their culture's normalisation, attraction and projection power and are able to exploit it skilfully. They assert themselves as valued partners in the cultural firmament of society in general.

Ultimately, the ideal community takes advantage of a sufficiently imposing critical mass to serve as a focal point and integration system for its members, while giving them a clearer identity and pride that are impervious to the influences of the majority. It earns recognition from the majority by helping to fashion its collective identity, and it has the means to back its convictions in the form of organisational infrastructures and human resources to ensure its development.

4. Contributions and Challenges of Official Language Minority Communities

4.1. Communities' Contribution and Resilience

The official language minority communities have reason to be proud of their achievements and contribution to Canadian society since Confederation. Merely resisting the steamroller of North American assimilation and the acts of aggression or negligence of politicians and governments across the country is a magnificent achievement in itself. The Francophone and Acadian communities have proven to be a force of nature by resisting the forecasts of a number of malevolent or uncaring social architects such as Lord Durham who have long predicted and prescribed their assimilation and disappearance.

Through this resistance, which in many cases became a demonstration of exceptional social and cultural vitality, the communities have acquired a cultural trait: the resilience of their collective backbone. By their example and stubbornness, they have transmitted a portion of that resilience to their Anglophone fellow citizens who have been inspired by it, which represents a significant asset for Canada, whose sovereignty is every day threatened by the omnipresence of the United States and by the dogma of globalisation. In addition, one should not forget the communities' very significant contribution to Canada's Gross Domestic Product.

The communities have achieved this *tour de force* through the magnificent efforts of countless men and women who understood the issues and combined a clear vision with extraordinary courage and exemplary tenacity. We mention this tenacity because a number of the major issues in the Francophone world had to be worked on for decades before being resolved. In some cases, they were resolved because exceptional politicians made the efforts to do so. Here we emphasise the exceptional contributions of the former Premier of New Brunswick, Richard Hatfield, Senator Jean-Robert Gauthier in Ontario, Gérard Pelletier in the federal government and many others. In other cases, public servants devoted a number of years of their professional lives and put their careers on the line. In particular, we celebrate the contributions of countless Francophones and Acadians who spent a large part of their working lives bringing these struggles to a fortuitous end.

4.2. Effects of Francophobia

Unfortunately, too many people and organisations in the majority who seem to lack self-confidence or personal pride consider the official language minority communities somewhat like the well-known and frustrating weed couchgrass, which, when cut or cultivated, spreads underground with renewed vigour. Without psychoanalysing this sector of Canada's majority, we are forced to conclude that their paranoia and stubborn attempt to cause the communities to disappear, as exemplified by the actions of the Reform Party and many others, is nothing more than a public admission of their impotence. No human being in full possession of his faculties feels a need to crush his neighbours in order to get ahead, on the contrary.

The federal and provincial governments' lack of leadership and commitment to implementing Canada's constitution and the fundamental principles of this country explains the confused actions of the Canadian State. A mere desire to act, together with a sufficient and measurable strategy, would readjust the Canadian political firmament with regard to the ministerial and statutory responsibility to ensure the vitality and development of the Francophone and Acadian communities and to promote recognition of the French language. We demand that governments take this action.

4.3. Public Support

We attach considerable importance to the issue of the support enjoyed by the Canadian official languages policy because the fate of the key recommendations of this report ultimately depends on it.

It will be a surprise for no one that, in a democracy, governments cannot remain ignorant of public opinion, at least not for long. It is simply a question of survival. In general, public issues that benefit from a high level of public support are precisely those which governments address on a priority basis. It is also these issues which are most visible in their public communication strategy.

However, there is one exception: Canada's official languages policy.

4.3.1. The Fear of Fear Itself

Across the country, governments give very little priority to this policy in their actions and public communications. They simply do not vigorously promote recognition of the French language or the development of minority Francophone communities. This is surprising behaviour, to say the least, given what is at stake.

In certain political circles, and even at times at senior government administration levels, people consider official languages issues in Canada, not with the legitimate pride that should be associated with these languages, but with genuine paranoia. This kind of fear of fear itself is based on the fact that linguistic issues can at times readily inflame public passions. It is also based on a poor understanding of the underlying reasons for this particular sensibility which relates to cultural identity and survival and to social justice and equity, which are part of history and our vision of it, the form of which varies depending on whether one is Anglophone or Francophone and a member of the majority or the minority. If this were understood, politicians would also grasp the importance of providing honest and accurate information, of clearly re-establishing the facts each time they are distorted and of constantly explaining context in order to counteract disinformation campaigns. But this fear of fear itself is mainly based on the ignorance of the value that Canadians attach to linguistic duality and to the protection of official language minorities.

4.3.2. One of This Country's Best Kept Secrets

It is surprising that, despite all the media coverage, which is aimed much more at causing and fuelling controversy than reporting good news, Canadian public opinion, as noted in Professor Stacy Churchill's analysis, has remained strongly in favour of official languages policies over the past 25 to 30 years. Professor Churchill's analysis has also led him to the conclusion that government administrations have failed lamentably in their attempts to inform Canadians of this support. In his mind, this "hidden support" is in fact a government communications failure. The media and Canada's political elites are also to blame since they have constantly failed to provide the public with fair or accurate reports on the actual opinions of the majority of Canadians.

And yet the existence of Canada's Francophone and Acadian communities and of the Anglophone community in Quebec is recognised as a fundamental characteristic of Canada, a rich legacy and a distinctive characteristic of Canada's identity.

The responses to two questions asked on behalf of the *Fédération des communautés francophones et acadienne du Canada* as part of an Angus Reid omnibus poll conducted in the spring of 1993 leave little doubt in this regard.

To fully understand these answers, one must recall the circumstances of the time: a recession that had begun in 1990 combined with a global wave of "Structural Adjustment Programs" and layoffs which left no economic sector untouched and dragged down the public sector in its wake. The unprecedented combined effects of recession, government deficits and public debt meant there was little public support in Canada for increases in what some deem non-essential government spending - a mistake.

Despite this resistance to public spending, and even in the wake of the failure of the Charlottetown Accord, 68 per cent of Canadians agreed in the spring of 1993 that "the federal government should support the development of official language minority communities in Canada", and 62 per cent contended that "having Francophone communities *across* Canada is a *great benefit for Canada*." Given the hard times and the very general, even counter-current nature of the questions, it is reasonable to suppose that the results clearly reflected a minimum of sustainable popular support.

It would appear that the vitality of the official language minority communities is recognised intuitively as essential to Canadian unity because it helps bring the two linguistic majorities together across the country and strengthens the sense of belonging of all Canadians, Anglophone and Francophone alike.

Furthermore, an analysis of the data from a number of polls conducted across the country over a seven-year period starting in 1986 which Angus Reid presented to participants at a conference organised by the National Francophone Parents Commission in Montreal in February 1992, led it to conclude that linguistic duality is well rooted in Canadian political culture:

for the nth time, a February 1990 poll confirmed that 80 per cent of Canadians "[still] believe in the equality of the two founding peoples". This is a general consensus observed in the various linguistic groups, including a majority of Allophones and 76 per cent of the country's Anglophones.

4.3.3. Potential Contribution of French Immersion Students

Philosopher and writer John Ralston Saul originated the *Avenir du français / Future of French* Program for high school immersion students in the greater Toronto area. Every year, immersion students are invited to attend a conference with leaders of Toronto's Francophone society to explore the effects of their education and their duty to make an active contribution to Canadian society. According to Mr. Saul (in a radio interview on April 16, 1999 broadcast on the CBC's English-language network), immersion program students have a distinct sense of their own identity, a perception that alters their view of the world and which, in his view, completes and thus amplifies the influence of the Franco-Ontarian community. Initiatives such as those of Mr. Saul reveal a growing understanding of the social impact of immersion on an increasing portion of the majority.

6. We recommend that the "*Avenir du français / Future of French*" formula be adopted in all regions of Canada as a way to foster nascent leadership in young Anglophones enrolled in immersion schools in understanding and consolidation of the values underlying linguistic duality and actualising that duality.

4.4. Exasperation of Francophones

Although they are often called survivors, Francophones and Acadians are tired of having to exhaust themselves continuously to gain access to services and institutions which governments are ostensibly required to provide, but which are in fact provided only grudgingly, and only after exhausting struggles, particularly since these services are offered as a matter of course to their Anglophone fellow citizens. Most will no longer endure merely surviving, fighting for crumbs, instead of having the means to flourish and make an active contribution to Canadian society as a whole. Many give up, abandon the struggle and slide slowly into assimilation. Many young people are seeking a positive way, their hearts at peace, to experience their identity and to show their individual and collective power. Generally speaking, they are not interested in the endless struggles of their parents, who all too often came out on the losing end and paid a heavy price for their actions. They want to live normal lives, of course, but normal lives that include their identity, culture and language. In short, they expect no more than what is guaranteed them by the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act*.

The fight for respect for Francophones' rights was and is a tough one. A single issue, schools management, has absorbed the energies of an entire generation. Started in the late 1970s, the struggle for the respect of this right, which is guaranteed by the Constitution, swallowed the invaluable energy and resources of two complete decades. Ontario, where approximately 50 per cent of Francophones outside Quebec reside, was the last to follow suit. And even at that, it did so with shamefully inadequate financial resources. Ultimately, the schools management issue was won, but at what price and what quality? We can only imagine what impact this same energy would have had if it had been devoted instead to other development areas for the communities or even society in general. The federal and provincial governments, which persist in operating illegally, are directly responsible for this diversion of the communities' vital energies by consciously refusing to comply with the country's constitutional system, by which they are governed.

4.5. Precariousness of the Hard Fought Gains

On the basis of their victories, Francophones dared hope that at least the gains achieved at such an astronomical cost would be maintained by governments. They were sadly mistaken: not succeeding to acquire equitable service and infrastructure levels essential to their development or even succeeding in having the little they had entrenched in the Canadian Constitution, they suffered the after-effects of budget cuts, the ideal pretext used by the federal and provincial governments to wipe out hard-won gains overnight. By dismembering the core of Ontario's health system, including the closing of Montfort

Hospital, the federal government's offloading through its strategy of devolving (or rather dumping) its responsibilities onto the provinces, the municipalities and the private sector, the evisceration of Ontario's *French Language Services Act (Bill 8)* and the dismantling of the schools management system in New Brunswick, the governments set upon the Francophone and Acadian infrastructure on false pretexts of the ilk of fiscal responsibility.

It should be remembered that, in March 1996, the Government of New Brunswick replaced all French and English-language school boards with a new three-level structure consisting of parent advisory committees at the schools, school district committees and two provincial boards, one Anglophone, the other Francophone. The parents committees and the provincial board have little executive authority and the key powers remain in the Minister's hands.³⁷ In a letter to the Minister of Education dated October 14, 1997, Claude Nadeau, Chairman of the New Brunswick parents' committees expressed Acadian parents' profound concerns about the government's schools reform:

We believe that the new [schools] act denies the official language minorities' right of management control recognised by the courts. The participation structure does not allow this management right to be fully exercised. In short, while recognising that the Minister [of Education] must exercise his powers, we seek a better balance between the exercise of his responsibilities and Francophone parents' management right.

4.6. Federal Government - Architect of the Weakening of the Communities

Perplexed by the obscure, but very effective twists and turns of the Canadian political establishment, the communities were ultimately worn down and a number collapsed under the cumulative effects of these government actions. But most of the communities have more or less resisted, some brilliantly so. The dream of recreating communities similar to the ideal vibrant community described above, which is essential to achieving the purpose of the *Official Languages Act*, has definitely been shattered under the weight of government offloading and/or interference.

In this sense, the federal government has become one of the principal agents in the weakening, if not collapse, of the many communities. This is not a question of demanding that government do more. Rather the government must abandon its policy of slow strangulation under false pretences and reorient its action towards complying with the fundamental laws of the country it claims to govern.

³⁷ The new government of Premier Bernard Lord has promised to review this policy, which leaves a glimmer of hope. However, parents have decided to continue legal action pending concrete action on this election promise.

4.6.1. Gérard Pelletier's Legacy

The Government of Canada and the leadership of the official language minority communities have had a roller-coaster kind of relationship since the first official languages bill was tabled 30 years ago. In the wake of the Bilingualism and Biculturalism Commission, Secretary of State Gérard Pelletier introduced a relatively ambitious program of investment in the development of the minority communities. This investment came in two parts: social animation in the early 1970s and community development in the second half of that decade. In both cases, the emphasis was placed on stimulating new leadership and on community development, which involved general funding over which the Francophone organizations held administrative autonomy to the extent that the funds were used in accordance with the general parameters established.

This investment helped re-energize the communities, which had previously had little in the way of resources and were quite weakened by 100 years of Anglo-homogenisation. This was the period when there were no French elementary schools in most provinces, except in Ontario and New Brunswick, and no one even considered the issue of schools management. Relatively quickly, however, the communities were able to acquire resources and expertise, which enabled them to design and implement ambitious development programs. They analysed the factors essential to their survival and vitality and adopted plans to secure them. A heightened organisational activity was felt across the country from 1977 to 1981, when a range of services and institutions were introduced, including primary and secondary schools, day care centres, libraries and cultural centres and businesses. In addition, the artistic world blossomed and the first timid steps were taken in the economic development sector. This activity had three main effects: a rekindling of hope for the future among Francophones, a reaffirmation of the collective identity and hope that a complete system of services and institutions essential to the vitality of the communities were developed in the not too distant future.

4.6.2. Post-Referendum Backsliding by the Trudeau Government

Unfortunately, Gérard Pelletier's vision was gradually diluted. We may suppose that the federal government was surprised that one of the effects of its investment in the development of the communities was that the communities realised that the government itself was one of the key barriers to their development. In addition, the provincial governments felt concerned and surprised by the new vigour of the communities and by the depth, seriousness and extent of their demands. Both the federal and provincial governments were caught off guard by the refinement and the effectiveness of the strategies which the community organisations adopted in support of their demands. Are we to conclude that they resolved to take the necessary steps to calm down these people

who had the audacity to believe they could make real changes and extricate themselves from this morass which guaranteed the break-up of their communities?

The Trudeau Government's re-election in 1980 sounded the death knell of community development managed by the communities because it resulted in the beginning of the abandonment of full support for development and a propensity for the tactic of divide and conquer. The Government of Canada soon changed its mind and linked its funding to a more docile style of representation and more "reasonable", indeed even reductionist community demands. Some ministers were convinced they knew what was best for Francophones, thus obviating the need to take the claims made by the leadership of the communities seriously.

In concrete terms, only two months after the referendum on May 20, 1980, this attitude resulted in Pierre Trudeau's withdrawal of the plan to create a central authority responsible for providing the pan-governmental leadership and orchestration necessary to guide the involvement of the departments as a whole in the development of the communities and recognition of the French language.

In November 1979, prior to its defeat in the House of Commons, the Clark Government agreed in principle to the creation and institutionalisation of a Tripartite Commission which was to bring together in a partnership the ministers responsible for key issues such as cultural development, health, economic development and others, their deputy ministers and representatives of the community. Its aim was close cooperation between the Government of Canada and the Francophone population outside Quebec and it was given a mandate to develop a comprehensive development policy for this population based on respect for language and culture, the implementation of this policy together with mechanisms and resources necessary for its full realisation, as well as verification of progress and effects. On February 1, 1980, Secretary of State David Macdonald formally signed this agreement with the Fédération des francophones hors Québec.

In a letter to the Fédération des francophones hors Québec dated January 28, 1980, Mr. Trudeau indicated his complete agreement with the principle of consultation mechanisms, while stating that he had no objection to the Tripartite Commission, though without formally committing himself. In mid-July 1980 (a mere two months after the defeat of the referendum), the new Secretary of State, Francis Fox, ruled out the idea of a Tripartite Commission, thus undoing the progress achieved under the Clark regime and indefinitely postponed any concerted involvement by the government in supporting community development.

This was a mistake of huge proportions. We had to wait 14 years, that is until August 4, 1994, before the federal government took a particularly timid step in the same direction by designating only 27 federal institutions as having to implement Part VII, with poor results, as we know today. This was a hard blow to the vitality of the Francophone and Acadian minority communities at a critical time in their

development. One can just imagine the effect that institutionalising a well-equipped Tripartite Commission in 1980 would have had on assimilation, the development of the communities and recognition of the French language in Canada.

During the 1980 post-referendum period, Prime Minister Trudeau was outraged by the yes support expressed by certain organisations representing the Francophone communities. Apparently put off by the notion of a people, he was disconcerted to learn that Francophones outside Quebec still had a strong cultural and political affinity with Quebecers. He did not appreciate this strategic position, which provoked a hardening of his government's arteries. Blinded by his own condescension, his government was unwilling to understand the validity of the judgement of the community leadership which, in view of René Lévesque's commitment to hold a second referendum, was relying on the change in the power relationship caused by this potential yes vote to make gains. It is a well-known fact that each self-affirmation by Quebecers in the history of Canada has afforded the communities golden opportunities to make major gains, opportunities which they have not always exploited to the fullest.

The Liberal government change course, a course that was maintained by the Mulroney Government and has been excessively accentuated by the present government. It chose to divide and conquer, to use the funding for community organizations first to weaken their national affinity with Quebec during the 1980s, and later to coerce some of the leadership to act as a battering ram against the aspirations of a very large portion of the Quebec population in the 1995 referendum. This veiled contempt had the effect of trivialising the organizations' role and delegitimising the communities' very right to exist since they would henceforth serve only as thorns in the sides of the "nasty separatists". In Mr. Chrétien's mind, this leadership appears to have lost all legitimacy, except as a bogeyman to scare soft Quebec nationalists. Meanwhile, the Canadian majority has not been fooled; it understands what their leader's message implies, and this has resulted in a decline in their respect for the communities' legitimate right to exist and develop.

To its credit, the Mulroney Government increased the Hatfield Government's initial \$4 million investment in the endowment fund established to cover the costs associated with regional delivery of the newspaper "Le Matin" in 1986-1987, a fund from which its successor, "L'Acadie nouvelle" still benefits. In 1986, the Conservative Government contributed some \$5 million in funding to the creation of a community radio network across Canada.

However, the Mulroney Government's economic and monetary policies, accentuated by its Liberal successor, sharply increased the unemployment and under-employment rates in the Francophone and Acadian communities, thus strongly undermining their collective ability to secure their economic future and, consequently, their cultural vitality. The least well-off in our communities paid the price of these measures, and the result was accelerated assimilation, not to speak of the devastation wreaked by further exclusion.

4.6.3. Constitutional Brokering

In 1981, despite extensive representations by the leaders of the communities, the Trudeau Government weakened the proposed section 23 of the *Canadian Charter of Rights and Freedoms* by adding the phrase "where numbers warrant" in order to bring the premiers of the Anglophone provinces on side. This short but controversial phrase prevented the communities from securing the management of their schools for at least another 10 years and still serves as a perverse justification in Nova Scotia, Prince Edward Island and elsewhere for denying schools to Francophones and Acadians, as though education were a privilege rather than a fundamental right, and as though the same tests were imposed on Anglophones in Canada, including Quebec.

These delays were a hard blow to the vitality of a number of Francophone and Acadian communities. The Canadian government's penchant for considering Francophones and Acadians as pawns on its geopolitical chess board conflicts with its constitutional obligation to ensure the development of the official language minority communities and the recognition and equal status of both official languages. Its reluctance to compel the provincial governments, energetically, to comply with their constitutional obligations has further undermined the communities to a considerable degree.

The Trudeau Government's reluctance to use its vast political power to entrench the rights of Francophones and Acadians in the Constitution disconcerted a number of prominent thinkers at the time. Jurist Robert Décarý wrote in an analysis published in *Le Devoir*³⁸ in 1980, "There will be a charter of rights entrenched in the Canadian Constitution. There will even be a freedom for all Canadians to move and settle where they will ... Anglophones, armed with all their rights, will move anywhere in the country." He added, "Francophones will have the right to earn a living in any province, in English. I will leave it to the demographers to explain what will happen to their language and culture when they earn their living in English." The last part of Mr. Décarý's eloquent analysis reads as follows:

Since he was already acting unilaterally and incurring the wrath of the provinces, Pierre Trudeau, if he had kept his promise, could have given Francophones the right to settle everywhere in Canada, at least "where numbers warrant", although, as Premier Hatfield noted in Ottawa, the presence of this phrase in a charter of rights is excrutiating. He did not do so, even though he could have. And if he abandoned the idea of imposing institutional bilingualism on all the provinces and giving Francophone minorities the opportunity and right to speak French elsewhere than in its schools and in the federal institutions, even though he has the power to make his every wish come true, who will ever be able to carry it off?

³⁸ Robert Décarý, "Francophone Minority Bargaining", *Le Devoir*, Montreal, October 8, 1980.

Furthermore, to the extent it shows that Pierre Trudeau, like Ontario, is prepared to sacrifice the Francophone minorities' rights to the federal government's ambitions and quest for power and symbols, this draft charter represents a hard hit to the credibility of the pure intentions of the Prime Minister and his emissaries when they say that individual rights take precedence over the powers of governments ... And to the extent it shows that, even at the peak of his power, Pierre Trudeau does not want and cannot do more for the Francophone minorities than open schools "where numbers warrant", the charter puts the minorities back where they started, at the mercy of the good will of the provincial governments and their populations, after being told for years that their survival depended on the entrenchment of their rights in the federal charter.

Thus, hiding behind this immense smokescreen that is the recognition of the right to French education, when it is not accompanied by recognition of the right to health and social services, the right to work and the right to justice, Pierre Trudeau has resigned himself to admitting that political reality, and the votes it brings, often exceed constitutional fiction, even in the sacrosanct field of entrenchment, presented in the abstract as a panacea. (Our emphasis.)

4.6.4. Federal Government's Coercive Approach

In the early 1980s, acting through the Department of the Secretary of State (which subsequently became the Department of Canadian Heritage), the federal government opted for clamping down on the range of activities it would agree to fund. It began to interfere rather indecently in the organizations' leadership election process and to send messages to that leadership concerning employees or volunteers which it felt were too outspoken. In many cases, the leadership submitted to its demands out of fear of losing grants and honours. The Francophone leadership's slide down the slippery slope toward subservience had begun.

By 1984, the Fédération des francophones hors Québec (FFHQ) was a mere shadow of its former self, as were the majority of its member organizations. Its political language changed from what it had been since its inception, that is to say demanding, proud and affirmative, orchestrating the development of the communities through power relationships where necessary and cooperation when useful, to that of a supplicant, its eyes riveted on the ground. Once on this slippery slope, it was catapulted into an absurd situation, as a result of which the Francophone issue was relegated to virtual oblivion, removed to all intents and purposes from the Canadian political agenda. For some time of course, this leadership continued to publicly state its claims to please the crowd at community meetings, even though it had already opted to act behind the scenes as a buffer between the communities and the governments.

The FFHQ, which subsequently became the Fédération des communautés francophones et acadienne du Canada (FCFA), and its member organizations slowly but surely bogged down and became an extension of the government machinery, seeking in the process to soften and manage the expectations and fervour of Francophones and Acadians. The cycle was completed. Not entirely deceived, Francophones became disillusioned with their government's apparent intentions and the bizarre contortions of some of their so-called leaders. They refocused their energies on everyday survival in other areas of social activity.

Despite their leaders' abdication, the rank and file of the communities acted, and are still acting, as best they could outside their representative organizations, generally succeeding in only mixed gains, although some crucial and striking results (SOS Montfort, the Franco-Ontarian college system and certain western economic development organizations) have reassured us as to the resilience and spirit of Francophones and Acadians. Some associations experienced periodic bursts of energy before quickly returning to their state of chronic lethargy. Showing a low point of subservience,³⁹ the Association canadienne-française de l'Ontario declared during the recent provincial election campaign that the Harris government "had nothing against" the Franco-Ontarian community. That government did indeed introduce schools management, on the cheap, but was forced to do so to comply with the Supreme Court of Canada's judgements, an action which failed to compensate for the damage wreaked by its policies.

With few exceptions, the so-called representative organisations of the Francophone communities are totally isolated from their communities and their leadership is ineffective. In addition, they have stopped informing community members and making them aware of the crucial issues and of the forces which may have a decisive impact on their lives. In general, the Francophone and Acadian communities find themselves short of mobilising, vital and effective leadership which can effectively negotiate power relationships between the minority and the majority and, by extension, between the organizations and the governments.

The main agent in this gradual weakening, the Department of Canadian Heritage, and its predecessor, the Department of the Secretary of State, has amply demonstrated its inability to understand its statutory responsibilities under Part VII and its lack of will to support the communities' development and recognition of the French language in Canadian society. We denounce this assimilating attitude. The Department's mandarins confuse the notion of support and constitutional responsibility with that of control and trivialisation.

³⁹ Some members of the community have come to the conclusion that "ACFO has been placed under government supervision" since the recent appointment of its Director General (Ontario 30, Radio-Canada, August 27, 1999).

7. We recommend that the Minister of Canadian Heritage give her department a wake-up call and issue a clearer and proactive vision of the purpose of section 41 consistent with Parliament's intent, together with clear instructions and a process for the thorough transformation of that institution's corporate culture.

According to the August 26, 1999 edition of the Fransaskois weekly, *L'Eau Vive*, the Parliamentary Secretary for Canadian Heritage, Mr. Mauril Bélanger, "virtually gave the provincial organizations an ultimatum at the 24th Annual General Meeting of the Fédération des communautés francophones et acadiennes in Moncton last weekend, suggesting that the provinces reluctant to sign, or slow in signing the agreement offered, might experience a reduction in funding increases currently on the table." The coercion of already submissive organisations is in full swing. The Minister of Canadian Heritage would do well to keep her parliamentary protégé in line, unless of course he was but her messenger.

4.6.5. Per-Project Funding Policy

The nature of financial support for the official language minority communities has thus changed over the years, from support for community development through basic funding during the 1970s to specific per-project funding, which is not too threatening to politicians and even less disturbing for public servants. In other words, the base funding for community organisations has been radically reduced in favour of increased funding for specific projects, which must be deemed to be consistent with the government's objectives of control. The type of project the government chooses to fund is increasingly evolving toward the superficial and tends to obscure the essential purpose of the law. This policy is in direct contradiction with the obligations of the federal, provincial and territorial governments under the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act*. Per-project funding remains the instrument of choice for perpetuating the subservience of community leadership.

8. We recommend that the funding formula for organizations dedicated to the development of the communities be redesigned based on the findings of a future joint study to be conducted by the Government of Canada and the key organizations representing Francophones and Acadians, and this concerning identifying sustainable funding formulas serving to those organisations' self-sufficiency and effectiveness. We favour the creation of a trust fund of some \$500 million constituted gradually over a period of five years. This trust fund would be administered by a joint management committee consisting of representatives of the communities and the federal government and will also provide for a dispute resolution mechanism.

This revision will have to involve all sectors of Francophone and Acadian society, including women, ethno-cultural communities, young people and the less fortunate.

This trust fund will help fill the void created by the federal and provincial governments' refusal to provide the communities with development tools inkeeping with those they offer the majority. The association network is called upon to fill this void caused by the irresponsible attitude of our governments. A fund of this size would generate income of approximately \$30 million a year, would ensure more independent management and thus room for action by the association network and constant and relatively predictable cash flows.

4.6.6. Sponsors and Agents of Submission

The funding leverage was also used by the mandarins at the Department of Canadian Heritage to force the restructuring of the association network's organisational structures which, remote-controlled through the Department's dubious directives, had a number of negative effects. First, it acted as a funnel for the federal government's financial contribution cuts, then even further tightened the sponsor-agent relationship that developed between the mandarins and a certain group of community leaders.

The result was an imbroglio in which certain leaders who resisted the guidelines were caused to be removed.⁴⁰ Astronomical amounts of money and energy, in fact several years of precious time, were eaten up by this pointless exercise. The resulting structures, where visible changes could be observed, have served more as sounding boards for the rather self-serving ideas of certain departmental officials than as organisational infrastructures for orchestrating the development and vitality of the communities. The paralysis caused by this forced restructuring deprived the communities of effective and legitimate leadership. Francophones and Acadians realised that a certain leadership had turned into a channel for relaying messages from the government to the community, and that their messages to the authorities were not getting through.

We deplore this attitude, which has had devastating effects on the communities. Despite the Prime Minister's periodic declarations to the contrary, we can only denounce the discrepancy between what he says and the everyday actions of his government. Artificial celebrations such as the Year of Canadian Francophonie, no doubt useful for symbolic purposes, may henceforth merely serve as a source of pride for a few community leaders, while concealing the government's poor performance in supporting community development. It is high time our governments added substance to this

⁴⁰ These less than voluntary departures often came about as a result of interference by politicians and public servants in the internal affairs of certain community organisations.

symbolism, which appears to be a mere façade when not supported by concrete and productive action.

4.7. Withdrawal and Offloading by the Government of Canada

Over the past decade, the Canadian government has displayed a disturbing lack of awareness of the effects which the gradual dismantling of the federal government machinery has had on the minority communities. So much so in fact that the effects of some gains by our communities were largely offset by draconian cutbacks. In his last annual report, the Commissioner of Official Languages documented the erosion of federal services in French following reorganisation of the federal government. The transfer of responsibilities to the provinces, privatisation and contracting out have resulted in an unacceptable reduction of available services. We denounce this offloading and encourage the government to take the necessary steps to correct the situation in cooperation with the provincial governments, its new agencies and its new private partners, and hand in hand with the Francophone organisations.

In addition, the federal government reduced its investment in official languages support programs from \$309.4 million in 1992-1993 to \$215 million in 1998-1999. This sharp decline has resulted in a considerable weakening in the ability of new Francophone education infrastructures to provide high-quality services, thus jeopardising their long-term durability. It undermined the association network's ability to act, thus resulting in general paralysis. We are pleased that this envelope has been partly reconstituted for the 1999-2000 fiscal year, but we feel the level of \$285 million a year is utterly inadequate. The Government of Canada must reinvest in the system the amounts that were diverted during this period if it hopes to regain the communities' trust in its sincerity and its commitment to our country's underlying foundations.

4.8. Critical Issues in the Montfort Hospital Case

4.8.1. Montfort Crisis: Canada's Crisis

Taken out of context, it would be difficult to understand how the decision to close a community hospital in Ottawa could cause a national crisis, except where that hospital is the only significant French-language hospital in Ontario and in all of Canada west of Quebec, where that hospital is the only Francophone training ground for the future physicians and health professionals of Canada's minority communities and where the government commission - a unilingual Anglophone commission at the time - which called for its closing, provides no solid economic argument to justify closing one of the most highly-rated hospitals in the province.

The fact that the crisis surrounding Montfort Hospital's future took place in the shadow of Canada's Parliament, in the heart of the National Capital, merely added to the confusion experienced over the unfair fight led by the Franco-Ontarian community to protect a unique institution which is one of the symbols of its success.

The Montfort crisis is definitely a concern for minority Francophones as regards access to health services in their language. However, its impact goes beyond issues of access to services and health issues. The particular attention we focus on the Montfort crisis in no way undermines the strategic, and often equally preponderant importance of a number of achievements by Francophones and Acadians elsewhere in the country.

The Montfort crisis is the crisis of Canada as a whole because it exposes the weaknesses and injustices of the system when it comes to giving the Francophone minority its due, as well as exposing the federal government's inertia and lack of political courage when it should be using its powers to compel respect for minority rights. It also provides another sad example of the Anglophone provincial governments' inability to understand, or refusal to accept, the importance of respecting minority rights and of the disastrous consequences of their actions on the country's future.

As Ms. Gisèle Lalonde, Chair of the community movement "S.O.S. Montfort", told the National Press Gallery in May 1997:

"If we can't save Montfort, the Quebec sovereigntists will have been right."

This statement is all the more poignant since Franco-Ontarian leaders have always been among the most fervent and optimistic defenders of Canada. The fact that no one in the Franco-Ontarian community rose to refute Ms. Lalonde's remarks is indicative of the extent to which the struggle for Montfort touched the Franco-Ontarian soul on this most fundamental issue, that is whether Francophones really have their place in Canada today.

In view of the seriousness of the situation, political leaders and Canadians across the country have tried to press Mike Harris' Ontario government to reverse the decision to close Montfort. Quebec's political community was unanimous in its support for the Franco-Ontarian struggle. Montfort brought together all of Quebec, Premier Lucien Bouchard, official opposition leader Daniel Johnson, sovereigntists, federalists, Francophones, Anglophones, union leaders and business people, as it was brought together at the time of Louis Riel's hanging, conscription and the fight against Regulation 17 banishing French instruction in Ontario schools.

The Prime Minister of Canada, Jean Chrétien, and some of his ministers, including Sheila Copps from Ontario and Stéphane Dion, Minister of Intergovernmental Affairs, also protested the Ontario government's decision. The Senate of Canada passed a unanimous resolution asking the Governments of Ontario and Canada to find a solution. The Commissioner of Official Languages, Mr. Victor Goldbloom, intervened in a more

direct and sustained manner. Ultimately, however, the federal intervention was limited to using passive persuasion.

As a result, although Montfort was given a six-month reprieve following the announcement of its final closing, the hospital was stripped of its major services including its emergency department, thus condemning it to insignificance and a slow death.

In July 1998, after unsuccessfully attempting to reach a negotiated settlement, the Franco-Ontarian community and Montfort Hospital, in desperation, appealed to the courts for help in saving an irreplaceable institution. In the fall of 1999, two and a half years after the crisis was triggered, the interested parties were still awaiting the trial court's decision.

In January of 1999, thanks in large part to the pressure exercised by Commissioner Goldbloom, the federal government made another effort to resolve the matter out of court by announcing the creation of a new national health professional training program for Francophone minorities in Canada. Funding of \$10 million was thus allocated to the University of Ottawa to implement the program, the preferred site for which is to be Montfort Hospital. However, the announcement also specifically stated that Montfort was not the only site concerned by the program and that the funds would be managed by the University of Ottawa, a bilingual institution. Once again, the federal government did everything it could to dilute its support for Montfort, and the province refused to budge.

More direct intervention in the Montfort case by Ottawa, by withholding provincial health transfers, for example, would have created what federal authorities deemed to be too dangerous a political precedent. However, how can political considerations of this kind compare to the danger facing a minority on the verge of disappearing?

9. **We recommend that the Government of Canada use its legislative and constitutional powers to intervene energetically and promptly to compel respect for the rights of the Francophone minority in Canada wherever the survival of an institution essential to its vitality or the maintenance of a service essential to its development is threatened.**

4.8.2. Montfort Case: A Historic Precedent

Whatever the outcome of Montfort's court action, it will be a historic precedent whose impact will exceed that of the *Mahé* decision, which concerned minority education rights. And while it is difficult to determine exactly what the effect of a Franco-Ontarian victory will be, we can form a good idea of the disastrous repercussions of a defeat for all Francophone minorities left without protection for their most important institutions.

For the first time in Canadian history, a Francophone minority, deprived of another constitutional right, is relying virtually exclusively on section 15 of the *Canadian Charter*

of Rights and Freedoms, protecting the vulnerable groups of society from discrimination, to save something which, if lost, would be irrecoverable.

The Montfort case is based first of all on the principle that Franco-Ontarians are a vulnerable group under Section 15 in that they are threatened by assimilation and that every government decision which favours assimilation of Ontario's Francophones, whether intentional or not, constitutes discrimination.

Montfort is so important an institution for the Franco-Ontarian community that its disappearance or reduction would inevitably lead Francophones to abandon the struggle for their own linguistic survival and to choose the easier way of the slippage into the majority language.

The Montfort case is also the first involving a Francophone minority using the Supreme Court's judgement in the *Reference re Secession of Quebec* and even *Beaulac* to assert the minority's unwritten constitutional rights.

Under its Court Challenges Program, the federal government eventually agreed to contribute \$75,000 to finance the Montfort case at the trial level. However, this amount will not be paid out until the some \$350,000 amassed in the community legal defence fund, the *S.O.S. Montfort Resistance Fund*, has been spent.

In actual fact, the federal government decision-makers have not concealed their opposition to Montfort's court action and have attempted instead to dissuade the representatives of the Franco-Ontarian community from taking the matter to court. The federal government was clearly more concerned with the political consequences of this unprecedented case than with securing justice for the minority.

Throughout the Montfort crisis, it was sad to see that the federal government's initial reflex is to keep its political options open rather than use its power to resolutely defend the minority. This attitude is largely responsible for the withdrawal of many Quebec Francophones from the federal system and undermines the vision of a Canada that generally respects its minorities.

A bold, immediate change is needed from Ottawa politicians wishing to get to the root of this evil which is eating away at the foundations of the Canadian federation.

- 10. We recommend that the Prime Minister set the tone for his ministers, members of the House of Commons and federal government employees by stating categorically that the protection of minority rights is a priority and that his government intends to use all its powers to compel respect for those rights.**

4.9. Harmful Effects of False Bilingualism

Bilingualism as practised in Canada has not always had beneficial effects for the Francophone and Acadian communities. This phenomenon must be understood and taken into account in our decisions. Bilingualism has often served as a serious obstacle to the creation of Francophone and Acadian institutions. It was long used to legitimise the refusal to create purely Francophone schools, community colleges and a range of other institutions. To justify this refusal, it was argued that bilingual institutions are the ideal way to produce bilingual people in a bilingual society. However, it has repeatedly been shown that immersion schools and bilingual institutions often serve as assimilation zones and thus help create a unilingual society.

Bilingualism is often applied in a selective manner. In the federal government, the responsibility to speak the other official language is more often than not imposed on Francophones. In Canadian society, Francophones are forced more often than they should to anglicise in order to survive since opportunities to work in French are virtually non-existent. One of the effects of this is to create two classes of Francophones, the minority who work in French and the majority who work in English and who are anglicising. The elites of our communities tend to come from the ranks of those who work in French, which is good, but which necessarily excludes a large portion of the community. Beware, then, of gaping bilingualism.

Linguistic duality is not synonymous with individual bilingualism. Linguistic duality means that Anglophone and Francophone citizens can live in their country, see themselves reflected in their symbols and rituals, be served, live, be educated and work in their language. The two concepts should not be confused. Linguistic duality should not mean imposing bilingualism as a condition for Canadian citizenship and access to the resulting benefits. It is clearly desirable for the largest number of Canadians to be bilingual, even multilingual, but this expectation must be balanced, which is not the case.

A distinction must also be drawn between state bilingualism and individual bilingualism. Linguistic duality clearly includes bilingualism in our government institutions. And our governments have a considerable amount of work to do before their institutions are effectively bilingual in accordance with the terms of our constitutional and legislative system. The current mainly decorative bilingualism, which conceals the more unilingual reality, is false.

4.10. Communities' Successes, in Spite of the Actions of their Governments

Despite the behaviour of successive federal and provincial governments and their official leadership's lack of direction, a number of Francophone groups operating in a number of sectors across the country have made remarkable gains due to their courage and tenacity. One need only recall the establishment of the Franco-Ontarian college system, the network of economic development organizations in the Canadian West and Acadia, schools management, the network of literacy centres and early gains in the health sector. The numerous artistic, cultural and communications⁴¹ breakthroughs attest to the extent of this collective will not only to survive, but also to prosper. We also know that Acadians are particularly proud of their achievements at the recent Sommet de la francophonie in Moncton.

There is good reason to celebrate the communities' resilience despite government policies. Unfortunately, recent years have shown that these gains are also very tenuous because they are vulnerable to political impulses and insufficient in themselves to ensure the communities' long-term vitality.

4.11. Example of the Economic Development Sector

The federal government's contribution to economic development has improved very recently as a result of the communities' efforts to educate certain key departments. First of all, a partnership was established in the field of vocational training and economic development in the form of the National Human Resources Development Committee. Originally focusing on vocational training, the Committee subsequently expanded its field of action to include economic development. Consisting of representatives from nine federal institutions and organisations involved in economic development of the communities, it serves as a channel for the transmission of ideas, policy development and design of mechanisms for advancing vocational training and economic development issues. We believe that this joint effort is a significant bridge that can serve as a model in other areas of activity, even if the actual impact attributed to it will not be measurable for a few years.

We single out the exemplary leadership of the Department of Western Economic Development (WD), which has come to understand the extent of its responsibility for the economic development of the communities in the Canadian West, particularly over the past two years. The Department has taken the necessary steps to determine the communities' actual needs, which has led it to opt for an integrated rather than a segmented approach to economic development. WD first supported the creation of an economic development organisation managed by the community in each province, an organisation which it has designated as the primary contact for its programming

⁴¹ The Réseau francophone d'Amérique will soon link 18 community radio stations outside Quebec by means of a satellite signal transmitted from a national production centre in Ottawa.

purposes. It has granted each organisation long-term funding, which ensures it organisational stability and the ability to conduct strategic planning over our horizon of several years. WD has also made each organisation responsible for managing an investment fund that enables them to stimulate new business creation and provide a structure for the expansion of existing businesses. The Department has managed to introduce this program through a reallocation of its existing financial resources, without any additional government funding. This is a perfect example for other institutions and for the provincial governments, which contend that they cannot carry out their responsibilities without receiving special compensation.

These are key lessons for the government as a whole. This integrated approach has enabled the communities' economic activity to expand. Expertise is developing, new businesses are being established, existing businesses are breaking through hitherto impenetrable ceilings, strategic networking is taking place and, especially, a critical mass of leaders, models, experts and innovators are intermingling, finding affinities and giving each other a leg up, thus stimulating, energising and gaining momentum. The result is a budding power that foreshadows the day when Francophones will take charge of their economic destiny, an essential condition to their collective development and renewal. This approach shows that government is already familiar with the community support policy models that guarantee success. We wonder why the other institutions and central agencies do not follow this path validated by the Department of Western Economic Diversification.

- 11. We recommend that the economic development support approach developed by the Department of Western Economic Diversification serve as a model for other federal institutions, including the interactive approach to transforming the Department's organisational culture.**

4.12. Commitment and Contribution of Numerous Public Servants

Readers of this study may be inclined to conclude that we are criticising all politicians and public servants for their actions and omissions. This is not our intention. We have already praised the extraordinary contributions of certain politicians, and they are not the only ones, far from it, but the experience of public servants is more our concern in this section.

Tens of thousands of public servants across the country do their work conscientiously, in accordance with their understanding of the issues and imperatives arising from Canada's official languages policy. In the federal and provincial public services, hundreds of committed employees work relentlessly, often in obscurity and for their entire professional lives, to ensure that their service or area of responsibility implements the official languages policy to the full extent of the institution's mandate.

We celebrate these men and women and express our deep gratitude and admiration for their constant and at times impressive achievements.

A distinction must be drawn between the individual and the government as a whole. A government whose general administrators as a class only partially understand the imperatives and scope of the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act* cannot carry out its mandate effectively, and one whose political leaders do not have the political will or courage to fully implement the law of the land can only fail. This type of government, which is representative of our federal and provincial governments, will not acquire the infrastructure, mechanisms and structures essential to full implementation of the Act. Furthermore, the employees of these governments will not rush to go against the grain since this will not be to their advantage from a financial or career standpoint.

However, many public servants do go against the grain of the predominant corporate culture and work to the full extent of their mandate for the development of the communities and promotion of the equal status of English and French. The lives of these committed government employees may be very rewarding, but they are often full of stumbling blocks and considerable personal costs, which may result in total exhaustion, disease and even dismissal. They often face systemic rejection, being labelled as troublemakers. The systems find ways to marginalise these people in order to neutralise their activities.

In the absence of leadership, commitment to the Act and clear vision, that is to say without any direct and conscious action on the system's reflexes, the lack of results is entirely predictable. Without any specific system of recognition or rewards for hard work required by the Constitution, there will be no passion for the job. Committed public servants pay the cost of their leaders' lack of will. Those leaders must be accountable for this disturbing and demotivating inequity.

Let us make one thing clear: the systemic discrimination that currently prevails is entirely different from that of the early 1960s, thanks to the vision of Pearson, Laurendeau and Trudeau. But it is nevertheless still real, palpable and full of unfortunate consequences for the employees affected and, consequently, for the vitality of the communities and the status of French in Canadian society.

- 12. We recommend that an appropriate recognition and reward system be designed and introduced throughout the federal and provincial governments. This system should include, among other things, rewards for exemplary employee performance in the implementation of Canada's official languages policy through promotions and fast-tracking to senior management positions in government institutions. The opposite should prevail in cases of omission and wrongs committed.**

4.13. Responsibility of the Official Language Minority Communities

It is not our intention to suggest that the federal government is solely responsible for the development and vitality of the communities or for recognition of the status of the French language. Ultimately, Francophones and Acadians themselves must accept the sizeable challenge of creating viable and vibrant communities for themselves. And many of them are taking their collective future in hand and making valiant efforts to this end.

This is a difficult task because visionary leadership is increasingly scarce. Virtually all the organisations have been saturated with the bureaucratic mentality and subjected to government objectives. This unhealthy atmosphere does not naturally nourish new visionary, energetic and independent leadership. The communities will have to take themselves in hand and provide their own new committed, confident and bold leadership. By loosening the reins, the Canadian government will facilitate the emergence of this new vigorous leadership which is essential to the communities' development and vitality.

The issue of the emergence of new leadership is closely related to the notion of socio-political dropping out.⁴² Francophones and Acadians have paid a high price for their survival and few gains, often to the detriment of their careers and health. They have witnessed the demotivating actions of some of their compatriots in leadership positions who, when faced with a choice between their career or social status and their community's welfare, capitulated.

The feeling of powerlessness caused by all the socio-political factors has resulted in a disturbing fatalistic attitude and lack of interest. The communities are now experiencing the paralysing effects of this socio-political dropping out. Francophones and Acadians no longer see themselves reflected in their representative organizations, whose approach they find sterilised, uninspiring, lacking analytical depth and, especially, of no consequence for their individual and collective lives.

Ultimately, however, it is up to all Francophones and Acadians to examine and re-energize themselves and tune back into the situation, which includes systematically demanding service in French where they live, participating in elections with power and vision and getting involved in partisan and other political structures.

⁴² This is a syndrome suffered by most post-modern societies whose members feel that it is futile to get involved in politics, a feeling validated by the conviction that governments are no longer governing since decisions are imposed on them by the mythical forces of globalization.

It is also up to the politicians and civil servants who have emerged from our communities to seriously examine their actions to determine to what degree they have become cogs in this machinery that is breaking up the Francophone and Acadian communities. It is up to community organisation leaders to conduct a rigorous review of their values, actions, positions and leadership styles. The integrity of this soul-searching effort and the dynamic actions that emerge will say a great deal about the communities' ability to free themselves from the control of this trend toward socio-political dropping out which is stifling them. From this will spring new or renewed leadership.

The weak leadership of the community organisations is disturbing because it serves the interests of both the communities and the Canadian State rather poorly. It is due in part to the high turnover of elected representatives and employees of these organisations. This turnover results in collective memory loss and demobilising instability in the organisations. It is essential that the communities have competent leadership, who clearly grasp the subtler issues involved in mobilising their members and who master the levers and techniques of productive political intervention. This transfer of the technologies of community organisation and political intervention cannot be done on its own.

- 13. We recommend that a national training centre for community stakeholders be established whose mission will be to develop and equip the emerging leadership of the Francophone and Acadian communities. The Centre's curriculum will be well rounded and include, among others, the following subjects: understanding the issues of community development, the role of the communities as keys to Canada's well-being, the issues associated with the gradual erosion of the communities, community mobilisation expertise, political intervention techniques, the legislative and constitutional framework of Canada's official languages policy and the procedures for launching legal actions, etc.**

We are still disconcerted by the lack of imagination and vision among the leaders of the representative organisations. We find it sad to see that these people have generally stopped dreaming and are unable to conceive, develop and promote a new plan for society that can excite not only their fellow Francophone and Acadian citizens, but also the majority and the political class. We call upon them to take action. To do so, they may draw on the example of people such as Ms. Gisèle Lalonde, who in launching, together with others, Operation Constitution to entrench Franco-Ontarians' rights in Canada's Constitution, has begun an intensive tour of some 50 centres in Ontario. Through this strategy, these people will inspire, prepare a blueprint for the future, inform, consult, mobilise and strategize. This type of intensive community action has preceded virtually all significant progress achieved by the communities in the past, in

particular in the schools management case in Saskatchewan. We hope that the leaders of the representative organisations will take note of this fact.

We are reassured, and even optimistic, since the communities to date have not always managed to the extent that they should have to draw on their collective resilience and on the grassroots strength on which their development and vitality depend. We call upon the Government of Canada to acquire the vision and take the action that will foster the emergence and affirmation of these grassroots forces on which Canada's very ability to fully achieve its legislative and constitutional obligations depends.

5. Assimilation

5.1. The Downplaying of Assimilation

Since the start of the 1995 referendum campaign, we have witnessed mandarins in the Department of Canadian Heritage and the Treasury Board promote the idea that assimilation is not as significant as Statistics Canada makes it out to be, that the rate of assimilation is slowing down and that those who take up the assimilation cause are in some way reckless accomplices of “the separatists”. It struck them that the most effective way to solve the problem of assimilation and meet their quasi-constitutional responsibilities to minority communities was simply to demonstrate that the problem of assimilation had somehow vanished. If federal public servants had devoted all the energy they have wasted trying to play down the phenomenon of assimilation to adopting vigorous measures to counter assimilation and strengthen minority Francophone communities and families, Canadian society would now be much better off and taxpayers would be getting more bang for their buck.

This approach, the intellectual integrity of which is questionable, is making headway within the government; it is used to justify the lukewarm commitment from the Prime Minister and his ministers to the full implementation of the *Official Languages Act*. We agree that the criterion of language of use⁴³ is not as refined as it could be and that a small minority of people whose language of use is English still manage to somehow transfer their French language and culture to their children. Indeed, some of those brave souls have become effective leaders in the Francophone community. Unfortunately, they are the exception that confirms the rule, since the number of families in that category whose language and culture are transferred to their children is statistically insignificant. It has no bearing on the magnitude of the phenomenon of assimilation.

This tactic, coupled with the Prime Minister’s recent statement to a reporter from *Le Devoir* that “assimilation is a fact of life”, gives us great cause for concern. It is high time the Prime Minister stood up and set the record straight by ordering those mandarins to get back on track; that would enable him to confirm publicly and unequivocally his support for the principles underlying this quasi-constitutional statute and his commitment to ensuring that the government makes the requisite efforts. Our prime minister has a duty to provide the government and Canadian politicians as a whole with the impetus they need by generating the vision and clear political will that will make his government, and by extension the provincial governments, move in a new direction in their treatment of Francophone communities. His current fatalistic view of assimilation, combined with his efforts to paint an artificial, rosy picture and

⁴³ The widely used term “language of use” is defined by Statistics Canada as the language usually spoken at home.

suggest that all is right in the best of worlds and the government is doing what it can, gives the federal and provincial governments countless pretexts on which to avoid their obligations.

5.2. Undermining Identity and Culture

Assimilation is a complex phenomenon. It is a gradual process and is experienced to varying degrees of intensity. Individuals sense it first when their identity, their self, is undermined. The source of this undermining may be systematic assaults on the person's culture or denigration of the person's community. North American Indians, for example, were attacked in this manner through the residential schools program, the aim of which was to "make them White" by punishing them severely for any display of their own culture, which included speaking their own language. The effect may be less radical, although equally harmful, when the person's social environment serves as a constant reminder that he or she is different or abnormal or when the cultural mores of the person's own community are continuously devalued or even ridiculed outright. When command of the language begins to wane, doubt creeps in and the person slides more quickly down the slope of assimilation.

The quest for the socio-economic dividends associated with the perception of normalcy often leads the individual to question his or her intrinsic value and endeavour to gain self-worth by embracing the lifestyle and culture of the surrounding majority. It is human nature to want to feel included, not be left on the fringes of society. Even if a person still speaks his or her language fairly well, the clash between day-to-day living and the person's culture is a very strong force that can lead the person to abandon that culture and lose his or her identity. In cases where benchmarks like a sufficiently vibrant community and an accessible and functional institutional infrastructure are too weak, the loss of self-esteem combines with the desire to be part of a group that recognizes the person's worth. Gradually, the person adopts the values and cultural features of this environment which he or she considers normal and gradually pushes away his or her own cultural and identity. People are often assimilated, for all intents and purposes, long before they lose the ability to speak their language. North American Indians have expressions for this phenomenon; they refer to Indians who have been assimilated as "apples": red on the outside and white on the inside. Canadians of Chinese origin refer to compatriots who try too hard to become part of the majority as "bananas". They may be somewhat pejorative, but these labels sum up the phenomenon of progressive acculturation.

Depending on the specific characteristics of their community, including the relative size and social cohesiveness of that community, Francophones and Acadians feel the pressures of assimilation every day. The relative strength of their institutions determines their ability to resist those forces and forge a sociocultural environment that allows them to feel normal and to proudly assert their identity. Acculturation and

assimilation wrought havoc long before loss of language; measuring assimilation solely on use of language does not give the full picture.

The fragmentation of our community resulting from assimilation has an exponential negative effect on successive generations. The children and grandchildren of an assimilated person constitute further net losses to the community. Branches, and entire family trees, are cut down by what strikes us as a policy of cultural desertification.⁴⁴ Tens of thousands of descendants of assimilated persons are not included in government statistics, including the government's numbers on assimilation. Moreover, thousands have forever lost their constitutional right to French education and government services. The veiled and insidious vaporisation of this segment of our communities is another coup for our government, which claims to be so benevolent.

Without losing sight of the net cultural losses and the attack on community vitality, this situation generates a high social cost, a cost that taxpayers have to bear whether they like it or not. People without an identity, whose self is weak and ill-defined, are more likely to fall prey to emotional illness. Psychiatric facilities are home to many people who failed to compensate for the loss of their original identity by finding a suitable substitute in a new cultural identity. Assimilation is therefore more destructive than our mandarins with their rose-coloured glasses seem able to understand.

It is a sure bet that, years from now, there will still be people speaking French in Saskatchewan and southwestern Ontario,⁴⁵ for instance, but the mere existence of a few souls in a given region does not constitute a normal viable, vibrant community. Are they just an illusion, or are there still enough roots and sap to suggest that real communities can be revived? Do governments have the political will to assume their responsibilities by investing in revitalisation plans in all these regions, which are effectively threatened with the extinction of their fundamental rights, despite the guarantees afforded by the Canadian constitution? We shall see.

5.3. Cultural Debt

Francophone communities annually record a significant sociocultural deficit, mainly because of the alarming lack of commitment by governments to their development and governments' disdain toward some of the principles on which the country was built.⁴⁶

⁴⁴ We do not claim that this is a deliberate government policy. Whether it is or is not, the effect is the same, and that is what matters.

⁴⁵ We are not suggesting in any way that Francophone communities in Saskatchewan or southwestern Ontario are doomed to vanish. On the contrary, Francophone communities in underrepresented regions have displayed cool determination time and again.

⁴⁶ Appendix 11 lists the key sections of the *Canadian Charter of Rights and Freedoms* related to Canada's official languages policy.

The communities' life expectancy is threatened, and their ability to contribute to Canadian society as a whole is diminished. This annual deficit has translated into a debt of embarrassing proportions for our governments and all of Canadian society. Francophones and Acadians pay the cost every day. We urge the Chrétien government to acknowledge this debt to the communities, come up with sufficient funds to reverse the tide, and free up money to make good on restitution.

The damage goes back a long way, to be sure, but it also ties in with modern-day problems. An example that springs to mind is the recent social union agreement, which ignores language rights. The labour market development agreements signed under the *Employment Insurance Act* by the federal government and all the provinces except Ontario have taken away roughly half the language rights of the Francophone and Acadian communities. And on top of that are the attempts to eliminate almost all French-language medical services in Ontario.

The magnitude of this cultural debt has to be calculated, and the devastating effects and multiplying factors identified. A team of jurists, analysts, development experts (economic, social cultural, health and other types of development) and actuaries must be set up quickly to conduct this analysis and complete these calculations. The analysis must cover the historical and cumulative losses caused by the irresponsible actions and omissions⁴⁷ and the inadequacy of Government of Canada programs that have together contributed to the erosion of Francophone and Acadian communities, as well as the similar historical losses by the governments of the provinces and territories. Reparations commensurate with the losses will have to be considered and implemented, whether they consist in reinvestment in community development or recognition of the damages caused by past governments and willingness on the part of current governments to right those wrongs.

14. We recommend the immediate creation of a Restitutions Fund to restore and consolidate the vitality of the cultural identity of the Francophone and Acadian communities, the size of the fund to be determined following an analysis of the cumulative financial losses caused by sociocultural, linguistic and educational oppression. The Government of Canada and the provincial and territorial governments will have to contribute to this fund and the related restitutions based on the extent of their omissions and the damages they caused.

⁴⁷ For example, Manitoba's violation (and the federal government's tacit support) of the constitutional rights of French and Francophones for almost a century.

5.4. The Ill-Advised Penchant of a Minority of Sovereignists

There is another phenomenon that makes one grit one's teeth: there is a small minority of sovereigntists who are determined to prove that Francophone communities outside Quebec are dead. By all accounts, these people are convinced that Quebec's attainment of sovereignty is somehow linked to keeping those other Francophone communities quiet, if not eliminating them altogether. These people's behaviour belies their lack self-confidence and of political courage. Paradoxically, they are playing the same game as people in other parts of the country who want to bury the Francophone and Acadian communities once and for all. To them we recommend a healthy dose of pride and self-esteem and say that Quebecers, even sovereigntists, ought to take inspiration from the efforts of Francophones and Acadians.

They are indeed a minority, because most sovereigntists see no conflict between the idea of their creating their own country and the idea of fully supporting the development of Francophone communities outside Quebec. The Bloc québécois, to its credit, is still the only political party in all of Canada that has set out an integrated policy of support for the development and growth of Francophone and Acadian communities. That is deliciously ironic given that some federal politicians are trying to convince us that Quebec has to take most of the blame for the weakening of our communities.

The right of Francophone communities to exist and flourish is closely related to Canada's constitutional and historical context. It is not up to governments to declare their disappearance; it is not up to the Anglophone majority to declare their disappearance, just as it is not up to this small minority of sovereigntists lacking in self-esteem. We say now that only the communities have the prerogative to announce their own demise, just as they have the right to loudly proclaim their vitality and claim their due from all levels of government. We respect the full right of Quebecers to determine their political future. All we ask of them is that they be consistent in their views on Francophone and Acadian communities.

5.5. The Challenge of Demographic Development of the Communities

Let us be clear: unless a great deal more effort is forthcoming than is customary in this country when addressing (controversial) issues like these, we cannot conclude that Canada's Francophone and Acadian communities are strong and healthy and are growing even as their demographic foundation is being eroded.

5.5.1. Key Demolinguistic Phenomena

The expression “long-term” is often used to describe demolinguistic trends for the simple reason that demographic change is normally measured over generations and centuries.

The number of births, the number of deaths, the movement of populations and the abandonment of one’s own language and culture in favour of the language and culture of another group are dynamics that have a bearing on the evolution of the demographic vitality of those communities.

Primarily through the census, Statistics Canada provides us with much of the data that we need in order to determine what is happening and some of the indicators that help us measure change and identify trends (see appendixes 7 and 8). However, the profile we have is still very sketchy, and the indicators are unable to give us a complete picture.

The smaller the target population in numerical terms, the less accurate the results, mainly because the sample is increasingly less reliable. Moreover, with time, social changes related to the linguistic makeup of family units, for example, (half the spouses of Francophones with school-age children in minority communities are Anglophone) or to changes in the role of contemporary families in language acquisition and the cultural identity of communities severely undermine the reliability of the indicators we developed to meet the needs of an era that has passed.

The indicators used to measure changes in one group relative to another are changes in differential fertility, differential mortality, geographic mobility (net immigration vs net emigration, as well as interprovincial mobility) and net linguistic mobility.

Linguistic mobility or linguistic transfers, that is, the complete abandonment of one language for another and all variations in between, are a very complex, multifaceted phenomenon, particularly when the dynamic of acculturation, that is, the gradual abandonment of one’s own culture for the culture of another group and its links with the linguistic evolution of individuals and groups, is factored into the equation.

The most flexible indicator we can use to understand and measure these phenomena is probably comparison of the number of people who report which language is the language they learned first and still understand with the number of people for whom that mother tongue is also the language usually spoken at home. This indicator, commonly used to measure assimilation, also has the disadvantage of creating some confusion and not achieving unanimity among experts and others.

Despite their flaws, these calculations still help us measure, with varying degrees of accuracy depending on the variables used, the numerical gains and losses of a given

group and the group's evolution over time and in geographic space, including changes relative to other groups. However, it is essential that we and everyone else avoid reading into them things they cannot reveal.

5.5.2. Major Demolinguistic Trends in the Communities

For many decades, the very favourable differential birth rates in the Francophone and Acadian communities offset the negative effect of other variables; fertility alone ensured positive demographic growth, numerically as well as proportionally.

For more than a century, because of high anglicisation rates (resulting largely from the federal and provincial governments' use of a sometimes-vigorous policy of anglo-homogenisation), linguistic assimilation is one of the biggest factors in the deterioration of the vitality of Francophone minority communities.

Another factor is the birth rate among Francophones outside Quebec, which, according to studies by Professor Charles Castonguay,⁴⁸ fell below the replacement rate (2.1 children per woman) in the mid 1970s. In the past three censuses, the rate has been in the order of 1.6 children per woman. This is short of the replacement level of 2.1. We all have to wonder how this shortfall can be made up in order to stem the erosion of the communities.

Net interprovincial migration from Quebec is the only current factor that has a positive impact on the demographic vitality of the Francophone and Acadian communities. As the demographic slide continues, the number of French speakers⁴⁹ among non-Francophones has been rising significantly in all regions of the country since 1961. Boosted by growing official recognition of French and improvement in the social standing of the language, that proportion, small at first, had tripled outside Quebec by 1991.⁵⁰ The increase in the value attached to French by non-Francophones has probably helped strengthen the resolve of the Francophone and Acadian communities not only to survive, but also to celebrate their Frenchness.

Demographic growth in Canada is increasingly dependent on the arrival of immigrants from other countries because of low birth rates for all groups combined; however, there have been very few attempts to seriously analyse the impact of immigration on the demographic vitality of the Francophone and Acadian communities.

⁴⁸ Castonguay, Charles (1999). *Minorités de langue française : démographie et assimilation* [French-language minorities: demographics and assimilation], Senator Jean-Maurice Simard, Ottawa.

⁴⁹ In censuses, Statistics Canada lets each respondent determine his or her ability to speak French. Our empirical experience in this exercise suggests that many Anglophones are quick to say they can speak French, which can have the effect of inflating those data somewhat.

⁵⁰ The mere fact of being able to speak French does not mean that an Anglophone will support the right of Francophone communities to exist and grow, as witnessed by French speakers in the Reform Party.

Obviously, immigration is another key factor in the decline of the communities' demographic weight. Its negative impact on the communities, that is, the demographic gap between majority Anglophones and minority Francophones, at least over the past forty years,⁵¹ has by and large been on par with the linguistic "assimilation" of Francophones.

5.5.3. The Three Keys to the Communities' Demographic Vitality

In short, if we rely on the demolinguistic indicators used in Canada, which are somewhat flawed because they paint in black or white a situation that is far more complex and grows more complex every day, we see that those communities decreased slightly for the first time between the 1991 (976,415) and 1996 (970,207) censuses. Their proportion in Canada's total population is also dropping slowly,⁵² and unless Canada's official languages policy and linguistic development as it is currently practised in two key areas are changed, the trend could grow and the rate of erosion could increase.

Measures likely to increase the differential birth rate among the Francophone minority are, strictly speaking, beyond the scope of Canada's official languages policy.

The good news, however, is that it is realistic to think that official languages policy can have a significant impact on the other three main factors affecting the dynamics at play, that is, linguistic transfer, immigration and economic vitality.

All the federal and provincial governments would have to do is honour their linguistic, if not constitutional, obligations and coordinate their actions and use the means available to them to ensure that the objective of two provisions is met:

1. section 23 of the *Canadian Charter of Rights and Freedoms*, which deals with minority-language instruction (see section 2.4.1 of this document);

2. section 16 of the *Charter* and its companion provisions in Part VII of the *Official Languages Act*.

Full implementation of Part VII of the *Official Languages Act*, in which the government would involve all other governments and tap the most dynamic elements of the private and voluntary sectors, would obviously have a significant positive impact on the equality of status and use of English and French in the various sectors in which the communities are active and on the communities' economic, social, cultural, human

⁵¹ Remember the adverse effects of Clifford Sifton's immigration policies at the turn of the century.

⁵² In the early 1950s, Francophones and Acadians outside Quebec accounted for 7.3% of the Canadian population. Today, the proportion stands at 4.5% and drops to 2.9% when language used at home is taken into consideration.

resources and health development. All these factors would have a significant positive effect on linguistic transfer and would simply strengthen the impact of attainment of the objective of section 23 of the *Charter*; by the same token, they would stem the communities' demographic erosion.

We are of course referring here to federal government action in the area of immigration, which it controls.

It is high time we fixed the problems with Canada's current immigration policy, which is rooted in the immigration policy established by then minister Clifford Sifton at the turn of the century, one of the aims of which was to preclude entirely the emergence of a strong Francophone presence west of Ontario (see section 2.1). At the dawn of the third millennium, we believe it is reasonable for that vestige of anglo-homogenisation policy to be eliminated.

The official language majority communities, in conjunction with provincial government programs that serve their interests almost exclusively and are clearly controlled by the majority, have set up services in most major cities to help families arriving from other countries (and sometimes other provinces) adapt to their new home and settle in as quickly as possible.

Francophone and Acadian communities are only just starting to take effective action in this area, in Winnipeg among other places, despite the traditional cultural obstacles and the major handicap created by the fact that the numbers are usually too small.

The communities have neither the demographic density, the government clout nor the community resources they need to create structures on the scale of majority-community structures.

- 15. We recommend that the Department of Citizenship and Immigration, in its efforts to give Francophone and Acadian communities equitable opportunities to regain their demographic balance in accordance with its statutory obligations under Part VII, provide leadership in reviewing Canada's immigration policy and the application of that policy abroad by the Department of Foreign Affairs and International Trade. Regarding the application of the immigration policy in Canada, the Department must improve its settlement and integration assistance mechanisms, in particular by forming multi-level partnerships with the provinces (and municipalities) and with community associations and institutions.**

The third factor which could have a positive effect on the demographic situation is economic vitality and the ability of the economy to generate quality jobs and profitable businesses or cooperatives, and also attract significant investment. Just as the

depopulation of rural areas was a key factor in the restructuring of the domestic and world economy and did much to erode the Francophone and Acadian communities, the economic revitalisation of those communities through the knowledge-and information-based economies is probably the most effective way of reversing the strong demographic trend we see today. The demographic pull of booming economies is a proven phenomenon.

Stronger community economies would have an impact on many levels: restoring hope for the most disadvantaged groups in our communities by giving them the means to develop their cultural affiliation, including their return to the community cultural fold, thereby reducing the assimilation that is rampant among them; facilitating the return of some economic expatriates and integrating them into the communities once again; sparking interest among potential Francophone economic immigrants; facilitating community investment in the communities' cultural and social infrastructures, thereby helping to strengthen their viability and, by extension, slowing the process of erosion; and facilitating exports, which would generate significant amounts of money in the communities so that it could be reinvested in community ventures.

Improving the demographic vitality of the official language minority communities is one of the key challenges the Government of Canada faces in meeting its commitment under section 41 of the *Official Languages Act* to enhance the vitality and support and assist the development of the English and French linguistic minority communities in Canada.

6. Integrity of Leadership and National Interests

6.1. Squabbling between Ottawa and Quebec City

Prime Minister Chrétien and his ministers from Quebec have the peculiar habit of instigating political skirmishes with the Government of Quebec over the most insignificant things. This practice is in our view mean and visceral and does nothing for Canadian unity; on the contrary, it fans the flames of separatism. The federal Cabinet's obsessive fear has an adverse effect on official language minority communities. It leaves Canada's Anglophone majority frustrated and unable to understand Quebecers and, by extension, Francophones outside Quebec. This dangerous demonisation is unworthy of a government leader who decried the atrocities in Kosovo and causes many in the majority to question the legitimacy not only of the demands made by official language minority communities, but also the very right of those communities to exist.

This hate also undermines the self-esteem and identity of Francophones outside Quebec because it amounts to a pernicious assault on the traits and culture of Canada's Francophones. It is a blow to Francophones' pride and their determination to be who they are. And it is all the more difficult for Francophones to demonstrate their contribution to society in general when the political and media environment is thus poisoned. This rather childish hate - for childish is the only way to describe it - on the part of federal ministers results in Francophones outside Quebec who are bold enough to stand up and assert themselves being labelled troublemakers. Irresponsible bragging by federal ministers saps the energy and vitality of the minority communities. The damage caused by this endless bickering does more than counteract all the positive effects of the government's strategy (a strategy that is still too timid) for implementing Part VII of the *Official Languages Act*.

Moreover, the time and energy Minister Dion and his colleagues spend hammering away at Quebec serves as a way for them to side-step their obligation to ensure the development and support and promote the vitality of the official language minority communities. After all, the responsibility to serve the Francophone and Acadian communities is not Quebec's; that responsibility is shared by the federal, provincial and territorial governments.

Enough already!

6.2. The Chrétien Government's False Modesty

Similarly, the federal government seems to be afraid of the reaction from the media and Anglophone politicians when it takes positive initiatives in the area of community development. It ought to have the courage to do more to promote its contributions to official languages programs. Its recent decision to boost funding for education and community support programs was announced as an increase of \$70 million.

The government could have portrayed it as an increase of \$210 million over three years. As long as the Chrétien government continues to hide its achievements, small as they may be, and is afraid to come down firmly and consistently in support of the legitimacy and vitality of the Francophone and Acadian communities and the equality of status of French [and English], those who seek to denigrate those communities have free rein to spread as many falsehoods as they like in their efforts to shape public and political opinion.

6.3. National Interests

The viability and vitality of the Francophone and Acadian communities are inextricably linked to the interests of the various centres of Canadian power. The communities have their own intrinsic value: they reflect the image we have of Canada and of ourselves as Canadians. The vitality of Francophone communities stands as a tangible manifestation and affirmation of basic Canadian values.

The economic and financial power elites in this country are dependent on Canada's political stability. Because that political stability is inextricably linked to the existence of vibrant minority Francophone communities, those who stand at the helm of the Canadian economy have a vested interest in the emergence of those communities. We contend that the emergence and vitality of the Francophone and Acadian communities are in the national interest and that it does not suffice for them to survive as little more than culturally crippled entities.

The values that seem to guide the actions of the current government leave us deeply perplexed. The backsliding of recent years shows that the government is simply paying lip service to the principle of linguistic duality. The existence of two official languages logically depends on the preservation of vibrant and viable cultural communities from one end of the country to the other. The actions and measures taken by this government show that the communities' viability is not a priority.

The gaps, indeed the gulf, between the Prime Minister's official line and the actual actions of his government speak volumes and are enormously disappointing. The leadership he shows with regard to the provincial governments is laughable. He does not seem to grasp that in the absence of his strong leadership, the provinces will not act unless they are pushed into a legal corner or unless the political pressure from the communities becomes impossible to resist. In that sense, the Prime Minister has himself become a factor in weakening the national interest.

And yet he has ready access to the financial resources and all the other elements he needs to take matters in hand, switch gears and move in the right direction. Moreover, he is assured the general support of the Canadian public. The Prime Minister has an opportunity to become the "statesman" we all deserve by revamping his vision and transforming his leadership.

7. The Benefits of Linguistic Duality

Linguistic duality has many advantages for individuals, Canadian society and Canadian governments. First, linguistic duality is very closely associated with Canadian identity. One need only ask unilingual Canadians their opinion of what it means to be Canadian to understand how deeply ingrained linguistic duality is in their sense of national identity. The vitality of the official language minority communities goes a long way toward preserving that collective identity, without which the notion of national unity would lose much of its meaning.

The Canadian compromise is, admittedly, a huge challenge. It is precisely that foray into adversity that helped shaped Canadian values. Foremost among those values are tolerance of others, support for the right to be different and respect for people's differences. The simple fact that Canadians have had to accept one another and constantly renegotiate the relationship between English and French has made ours a tolerant society in which the two majorities, until now at least, have found a way to co-exist.

There is a direct link between the vitality of the official language minority communities and this principle of tolerance that has helped prevent outbursts of violence like those seen all too often in other parts of the world. That tolerance is being tested today in many regions, especially so in regions where the communities are weaker.

Learning two or more languages contributes to personal development; it broadens one's horizons and keeps one's mind sharp. It affords a wider perspective of the world and insight into the cultural framework underlying each language. It makes it easier to understand the people who speak the language, their cultural background and their natural behaviours.

Linguistic duality has led to the development of linguistic expertise and a second-language instruction industry in Canada. That industry has gradually built up expertise in the field that is recognised the world over. In Canada, the economic activity generated by the industry as a whole is considerable.

In bilingual regions like Moncton, Ottawa and even St. Boniface, bilingualism is a definite drawing card for companies that need a bilingual work force. The source of that bilingualism, that is, the official language minority communities, is vital to the overall development of the regions to the benefit not just of Francophones, but also of the Anglophone majority. We are compelled, however, to issue four warnings. First, call centre jobs, for example, do not pay very well and are not very rewarding, especially since they are often part time. The government's focus on the development of Moncton, for example, have made the peninsula and other Acadian regions

economic castaways. The profits made by those companies, most of which receive some financial support in the form of grants or tax adjustments, in the case of big companies, are taken out of the province and never make it back to the communities. In the end, the community does not necessarily see an increase in its political and economic power.

Attracting investment alone is not enough, because many investments end up draining the community's economic energy. We have a responsibility to examine the terms and conditions of investment, approaches to development and ownership structures in order to identify the advantages and disadvantages. The economic development model should be recommended in many cases.

- 16. We recommend that the federal government design and implement, in conjunction with the communities and the provincial governments, a program to capitalise on the bilingualism⁵³ factor by focusing on the establishment of businesses that can generate quality jobs and be a driver of community economic development.**

Because of its linguistic duality and because its population is well educated, Canada, especially the very bilingual regions, are a key port of entry for European companies looking to enter the North American market. Our command of language and our cultural diversity make it easier for European companies to retrain their highly skilled employees and hire local people who can settle in without difficulty. With a foothold in North America, these companies are in a better position to penetrate the lucrative American market because it is easier for them to adjust to the rules governing North American free trade.

Knowing Canada's two official languages is beneficial in terms of employment and average income. The number of jobs requiring the two languages is steadily growing because of linguistic duality, to be sure, but also because of the ever-increasing demand from businesses that want to be competitive on world markets. The salaries paid by these knowledge-based businesses tend to be above average. According to data from the 1991 census, bilingual people earn as much as 6% more than unilingual Anglophones in Montreal and Toronto, and the situation is similar in Vancouver.

⁵³ What we mean by "capitalize on the bilingualism factor" is strengthen the bilingual work force as a means of developing profitable businesses and cooperatives and generating revenue; also referred to as the dividend of bilingualism.

17. We recommend that the Government of Canada launch a national campaign to make all Canadians aware of the many advantages of linguistic duality. The campaign would showcase the contribution of the Francophone and Acadian communities to the development of Canada, the economic benefits associated with the vitality of those communities, the financial benefits to individuals who know both languages and the potential economic benefits for Canadian society.

We stated earlier that a sense of belonging and especially a sense of being normal are key to the vitalisation of the Francophone and Acadian communities. The recent Canadian Francophone games held in Memramcook, New Brunswick, were very telling in that regard. We were touched by the spirit of the young Francophones and Acadians who gathered at that event and discovered that they are not alone, that they are normal and that it is perfectly natural to be Francophone in Canada. That pride and the chance to feel at home are of inestimable value to Canadian society.

8. Highlights of the Responses to the Consultation

We asked a broad spectrum of individuals and organisations to consider and comment on our survey. All the main federal and provincial political parties were invited to take part, as were some 106 community organisations. The quality of responses was mixed, ranging from a simple acknowledgement to a comprehensive examination of the issue. Several of the political party respondents merely recounted their achievements or restated their positions without getting to the crux of the matter and without realising that they missed the point of the consultation or the implications for the vitality (or lack thereof) of official language minority communities. This dismissive response strongly suggests that the political parties do not consider community development and growth to be a priority.

We also spoke in person or by telephone with people whose duties are directly related to the issue, in particular the outgoing Commissioner of Official Languages, Victor Goldbloom, senior officials at Treasury Board and others.

8.1. Federal political leadership

The Prime Minister's spokesperson gave a response that was as short as it was evasive, but did try to make the PM look good. He indicated that Prime Minister Chrétien's Liberal government would continue to encourage the growth of bilingualism in Canada. The defence and promotion of linguistic minorities, wherever they are, constitute another fundamental value shared by all Canadians and the Liberal government. He offered a brief account of recent financial contributions to initiatives aimed at promoting bilingualism. The letter showed only minimal understanding of what the vitality of the Francophone and Acadian communities is all about and even less understanding of the issues related to the development of those communities and the Prime Minister's responsibility to demonstrate leadership. It gave no indication that the Prime Minister was concerned about the failings of his government; it simply made a lukewarm effort to convince us of the government's good intentions.

The brevity of the letter from the Prime Minister's spokesperson shows an alarming lack of understanding of the issues and a chronic lack of interest in the matter. At a time that is critical to the country's future and the future of the Francophone and Acadian communities, we deplore the attitude taken by the Prime Minister and his staff.

The reaction from the opposition parties was for the most part equally lacklustre. The Leader of the Official Opposition, Preston Manning, simply sent us a copy of his 1996-1997 blue paper outlining the principles and policies of the Reform Party of Canada

without addressing the issue in any way. The Progressive Conservative Party sent us a list of its accomplishments in the area of official languages in its last two terms but did not consider the questions we asked.

The Leader of the Bloc québécois sent us copies of two speeches he had made on the issue from which we could deduce his line of thinking and the party's policy regarding the Francophone and Acadian communities. The two speeches convey a great deal of reflection on the imperatives of community development. The Leader of the New Democratic Party took the federal government to task for failing to meet its responsibilities in the area of official languages and expressed her belief that Canadian unity and the growth and development of linguistic minorities are closely linked. She deplored the impact of the wave of privatisations on the range of programs available to promote the official languages.

All told, the letters leave us deeply concerned about the will of the current Parliament of Canada to assume its responsibility to enhance the vitality and support and assist the development of the Francophone and Acadian communities and promote the full recognition of French in Canadian society. We sound the alarm and urge the Prime Minister to stand up and launch sweeping changes in the government's corporate culture and the mindset of the political class on this issue. Time is running out for him to leave his mark on the country; were he to revitalise his government's will and efforts to apply the policy on official languages, he would be well on the way to securing his place in history as a statesman.

- 18. We recommend that the Prime Minister of Canada initiate sweeping changes in the corporate culture of the Parliament of Canada and the federal government as a whole in applying the policy on official languages.**

Senators rose in the Senate several times to comment on our appeal and validate our statements. Their remarks addressed various aspects of the challenge that helped increase the general understanding among the members of this illustrious chamber of the implications of failure by the federal government to act on the matter. They also served to raise the alarm and improve the government's understanding of the issues and opportunities related to development and growth of the official language minority communities.

- 19. We recommend that the Senate of Canada apply the test of linguistic duality and compliance with the precepts of the *Official Languages Act* and the language provisions of the *Constitution Act, 1982* to every bill which the House of Commons submits to it for consideration and approval.**

8.2. Provincial and Territorial Political Leadership

Generally, all the provincial and territorial governments did was point out a number of the programs they have created in the education sector; bear in mind, however, that most of the programs were imposed by the Canadian constitution and the *Official Languages Act* as interpreted by Supreme Court of Canada rulings.

Other provinces pointed out the framework agreements⁵⁴ between them and the federal government that enable them to offer a limited level of services in French, although the federal government covers almost the entire cost of those services. None of the provinces considered the heart of the matter, the fundamental issues for the future of the country or their plans to review their policy on the development and growth of the Francophone and Acadian communities and the full recognition of French. Nor did they give an account of many provinces' deep cuts and general abandonment over the past few years, moves that are having and will have for years to come a devastating effect on communities.

What they offer essentially are empty statements characterised by a lack of vision or political commitment of any kind that would offer hope of a change in course and a firm commitment to the development of minority communities. The result is that very few of these noble words are translated into concrete actions, and what actions are taken fall far short of the mark.

The statements made by some provincial opposition parties suggest a commitment to the principle of two official languages that outstrips the commitment from the governing party. The Ontario New Democrats, for example, suggested draft legislation that would require municipalities with delegated responsibility for provincial programs to provide services in French at least on the same level as the provincial government. The impact on their commitments of what would happen if they were to one day form a government is hard to predict. Still, we believe that that policy is essential.

The evasiveness of the responses we received reflects the weak commitment from the provincial and territorial governments and is a sign of their lack of understanding of the stakes and the benefits viable, vibrant communities could bring to their province. The concept of minimum conditions for success or even survival is not understood or is pushed into the deepest recesses of their minds. Nor are they meeting their constitutional duty to apply to the full extent of their mandate the federal government's policy on official languages. We deplore this indifference on the part of the provincial governments. It is up to the federal government to undertake a sweeping initiative to mobilise its provincial partners.

⁵⁴ We do not wish to diminish the value of any of these framework agreements. Some of the agreements represent considerable progress.

20. We recommend that the Government of Canada and national organisations representing the Francophone and Acadian communities join forces to launch a sweeping initiative to raise awareness among the provincial and territorial governments and that this initiative culminate in a federal-provincial conference aimed at establishing a comprehensive federal-provincial strategy for developing all aspects of the communities' lives and furthering the recognition of French.

8.3. Organisations Representing the Communities

The organisations that represent the minority communities voiced grave concern about the devastating impact on their members and the communities of governments casting them aside under the guise of fiscal housecleaning. They blame the government for leading the way by transferring to the provinces many areas of responsibility that are vital to the communities' future without taking steps to preserve the principles underlying the official languages policy.

The Fédération des communautés francophones et acadienne calls for the agreements transferring responsibilities to the provinces to be made much stronger and for coercive measures to be added. It sharply criticises the government transformations that were used as a pretext for the federal government to withdraw financially from community development. It insists that every devolution agreement include the transfer of official languages obligations. The Fédération des jeunes canadiens-français takes the same position. It also demands that a youth clause be added to Canada-community agreements in order to ensure investment in that segment of the Francophone population, which represents hope for the future. The Commission nationale des parents francophones was much more direct in its demands: "Federal political support has been eroded enough."

The organisations feel they have been left to fend for themselves. The Fédération des communautés francophones et acadienne (FCFA) told us that Canada's Francophone and Acadian communities no longer have the means to ensure that theirs will be a vibrant future. It would be hard to imagine a more dismal outlook. The increase in funding for the Official Languages Support Program is not enough and offsets only one third of the cuts made since 1992-1993, according to the FCFA. Moreover, because it takes several months every year to transfer the money from the federal government to the organizations, carefully planned initiatives cannot proceed, and that saps the organizations' energy and completely undermines their efforts. The communities are the ones who suffer the consequences. It is difficult to say whether this is a deliberate policy of neutralisation or a strategy aimed at preserving and justifying public servants' jobs; either way, the effect is still to wear away the organizations' ability to take action. This bureaucratic game is harmful and completely unwarranted and represents

a breach of the Government of Canada's obligations.

- 21. We recommend that the Department of Canadian Heritage transfer funds to the community organisations on April 1 of each fiscal year, which of course means that the monies must be approved before that date.**

National, provincial and regional organisations alike sent us many briefs, analyses and demands that enabled us to identify more clearly the problems associated with the development and growth of Francophone and Acadian communities. This large body of briefs made it clear to us that these organisations have worked very hard, yet their efforts have resulted in relatively few accomplishments; more recently, in fact, the organisations have unfortunately lost ground. Some organisations, such as the Fédération des parents acadiens de la Nouvelle-Écosse, sent us lengthy briefs and met with us to discuss them. All the organisations expressed relief and delight that we were initiating this debate in the Senate. Many organisations emphasised the need to revisit the devolution agreements that have already been signed.

In its presentation to the Treasury Board working group, which it shared with us, the Association canadienne-française de l'Alberta made a number of very specific comments which we reiterate here to convey a sense of the general tone of the submissions from Francophone and Acadian organisations.

- ☐ The transfer of powers was improvised. The restructuring of the federal government was not really planned or carefully thought out. It was done without consulting our communities and without taking into consideration the impact on our communities.
- ☐ The privatisation of services leaves us at the mercy of the good will of service providers.
- ☐ Francophones are the big losers from the reduction of transfer payments.
- ☐ The federal government is a low-key partner.
- ☐ The federal government is forcing us to again wage battles we thought we had won.
- ☐ The federal government is giving in to intimidation.

9. The Savoie, Fontaine and Commissioner of Official Languages Reports

The nature and inadequacy of the Government of Canada's support for the communities and its actions under the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*, coupled with the unfortunate repercussions of its restructuring strategy, have been the focus of two special studies and a number of studies and reports by the Commissioner of Official Languages. Instead of reproducing those reports in their entirety, we point out a number of elements that we believe are crucial in understanding the issues and giving a better idea of the action the government should take.

9.1. Highlights of the Savoie Report

At the request of the Department of Canadian Heritage, the Treasury Board Secretariat and the Privy Council Office, Donald J. Savoie tabled a report entitled *Official Language Minority Communities: Promoting a Government Objective* in which he presented his analysis of the inadequacy of government action in support of the development of official language minority communities and the recognition of French in Canadian society.

Savoie observed that rural and urban populations face different problems in terms of development and growth. He suggested that urban populations are more vulnerable to assimilation but are better off economically. He also suggested that rural communities have resisted assimilation but are vulnerable from an economic standpoint.⁵⁵ We are grateful to Savoie for the new light he sheds on this particular dynamic. The goal of developing these two categories of community calls for tailor-made approaches.

We believe, however, that the goal has to be refined even more. This analysis may be valid for regions like the Acadian peninsula and eastern and northern Ontario, but in other rural areas, economic weakness and population decline have for three decades been coupled with a trend toward assimilation as strong as the trend in urban areas. The ability of these communities to grow, whether they are in northern Alberta or southwestern Ontario, for example, is weakened on both counts, which makes the challenge that much greater and that much more of a concern.

We would add another dimension to Savoie's analysis, namely disparity in the ability to resist assimilation depending on whether one belongs to a relatively affluent segment of society, the low-income working class or the disadvantaged in all walks of life, that is, the marginalised. Adjustment strategies will have to take into account the fact that the

⁵⁵ Savoie, Donald J. (1998), *Official Language Minority Communities: Promoting a Government Objective*, Ottawa: Privy Council Office, p. 54.

most disadvantage social class in communities tends to hide in big cities and blend in with the general population. As a result, they tend to not participate in activities and to disappear from the collective consciousness of the community. These people are doubly penalised and therefore have to deal with exponential losses; they are unable to access some services and activities, and they become marginalised socially and culturally at a faster rate.

Women, in particular, find themselves more often than they ought to grappling with the effects of injustices created by the immoral economic restructuring imposed by our governments. The same is true of the 31% or so of Franco-Ontarians who are functionally illiterate and many other victims of our governments' policies of economic and social exclusion.

This dangerous situation has resulted in the artificial creation of a useless elitism within the Francophone community coupled with the forced cultural loss of a significant component of our communities, not to mention the adverse impact on the everyday lives of the less advantaged, which drains the energy that is so important to cultural expression and growth.

- 22. We recommend that the Government of Canada organise by the end of 2000 a national symposium, supported by a series of studies and analyses, to examine instances of exclusion in order to determine the root cause of cultural abandonment and develop and implement strategies aimed specifically at the reintegration of "forced cultural dropouts".**

Savoie rightly criticises the project-by-project approach to funding which the government prefers to use in implementing section 41.⁵⁶ He expresses the view that supporting all kinds of projects can help shape the examination of important issues, such as identification of the federal government's true role in promoting the growth of Francophone communities outside Quebec.⁵⁷ The measures Savoie suggests the federal government could take to get back on track are interesting; we discuss them in the following sections.

9.1.1. A Minister of State for Community Development

Appointing a minister of state whose role would be to promote the interests of official language minority communities strikes us as the perfect first step; we would suggest, however, a broader mandate and more resources. Without real authority and adequate

⁵⁶ In this document, the phrases "section 41" and "Part VII" are used more or less interchangeably. Note that section 41 is the cornerstone of Part VII, but sections 42 and 43 are the other provisions which define the scope of that part.

⁵⁷ *Ibid.*, p. 42.

resources, this secretary of state would become a smokescreen and yet another way for the government to avoid its obligations. The Prime Minister has to make a commitment to the development of Francophone and Acadian communities; we believe it is essential that he appoint a political lieutenant with sufficient resources to ensure proper continuity and provide day-to-day leadership. We therefore expand on Savoie's recommendation.

23. **We recommend that a Minister of State for the Development of the Official Language Communities be appointed. This Minister of State will have executive responsibility for this statutory horizontal policy which is the official languages policy. In particular, he or she will be responsible for ensuring compliance with the *Constitution Act, 1982* and for orchestrating the implementation of Part VII of the *Official Languages Act* throughout government, in addition to championing and overseeing the development and implementation of support programs for the development of the communities and promotion of full recognition of French and English in Canadian society.**

9.1.2. An Accountable Unit in the Privy Council Office

Creating a unit in the Privy Council Office to provide Cabinet and Cabinet committees with information on the measures taken by departments to implement section 41 is a crucial preliminary idea, but one that needs to be developed further. It is essential that a single corporate entity⁵⁸ be ultimately responsible for the federal government's implementation of the Act, and it is clear that the unit's role cannot be limited to providing Cabinet with information. It is vital that the unit be directed to provide leadership and be accountable for the government-wide strategy and that it coordinate all government actions. The unit must be given sufficient financial and human resources to properly carry out its duties. This task cannot be left to the Department of Canadian Heritage, which has neither the mandate nor the authority over other institutions to direct the application of this horizontal statutory policy.

The Community Development Secretariat, which would report to the Clerk of the Privy Council, must be overseen by an under-secretary for the development of Francophone and Acadian communities who would be responsible for government-wide application of the *Official Languages Act* and the related provisions in the *Canadian Charter of Rights and Freedoms* and would assume corporate responsibility for government actions in support of the development and growth of the Francophone and Acadian

⁵⁸ The current division of this responsibility between the Department of Canadian Heritage, the Treasury Board Secretariat and the Privy Council Office is the perfect way to shatter Parliament's will to apply Part VIII and make anything worthwhile come to pass.

communities. These duties will include responsibility for setting the government's corporate objectives and establishing a government-wide strategy for applying the Act, clarifying the government's expectations of the efforts of each federal department and institution, and devising and managing a system for measuring the performance of those institutions on that front.

24. We recommend that a Secretariat for the Development of Francophone and Acadian Communities be established within the Privy Council Office. This Secretariat, headed by the Deputy Secretary⁵⁹ for Development of the Communities, and provided with adequate resources, will support the Minister of State for Development of the Communities and the Cabinet in the full implementation of the linguistic obligations of the Government of Canada, including the orchestration of the implementation of Part VII of the *Official Languages Act* by the 128 targeted institutions. The Cabinet Deputy Secretary for Development of the Communities will chair the Committee of Deputy Ministers on Official Languages and provide it with the necessary support and orientation for the full implementation of Canada's official languages policy.

We note that on the whole, the Government of Canada's August 2, 1994, program to implement section 41, including the designation of 27 federal institutions,⁶⁰ has failed in some respects and produced very mediocre results. The designation of some institutions has had the odd effect of reducing the accountability of the 101 other federal institutions responsible for the development and growth of official language minority communities.

25. We recommend that a comprehensive government program involving all 128 federal institutions with significant responsibility under section 41 of the *Official Languages Act* and the provinces and territories be adopted. In particular, this program will include a strategy to involve the provincial governments in providing active and sustained support for the development of the communities, including mechanisms for joint action by the federal and provincial governments. The program will also include a retroactive review, and renegotiation if necessary, of agreements respecting devolution to the provinces and their contractual terms and conditions to correct deficiencies and ensure implementation by the provinces of policies

⁵⁹ This Deputy Secretary, with an executive classification, would report directly to the Clerk of the Privy Council for administrative purposes.

⁶⁰ Since the initial designation on August 2, 1994, the Canadian Centre for Management Development and Parks Canada have been added to the list and the Cape Breton Development Corporation has been removed.

and programs to comply with the letter and spirit of the federal government's linguistic obligations under the *Act* and the Canadian Constitution.

26. We recommend the designation of each of the 128 institutions under the program to implement section 41, based on the classification of the four accountability categories developed by the Commissioner of Official Languages.

We give Savoie full credit for his suggestion that Cabinet set aside one meeting a year to analyse the application of the Act. That meeting would have to focus on a formal review of the extent to which the government as a whole has fulfilled its responsibilities related to implementation of the *Official Languages Act* during the year. The review would include an analysis of progress and success in implementing the government-wide strategy and an examination of the actions not only of government departments, but of all federal institutions as well as provincial government institutions. We recommend, however, that the agenda for this annual meeting be expanded to include application of the provisions in the *Canadian Charter of Rights and Freedoms* that have a bearing on community development and the recognition of English and French.

9.1.3. Funding the Government Strategy to Apply the Official Languages Policy

Savoie recommends the creation of a \$60-million fund comprising new money to be spent over five years. He suggests that the money be used to fund projects and that it be managed by the Department of Canadian Heritage. We agree with Savoie when he criticises earlier in his report the project-based funding model favoured by Canadian Heritage, yet are perplexed by his suggestion that that department manage the new fund, given his comments about the department's ability to take action.

We have recently heard that the government is in the process of creating a \$30-million, five-year fund the purpose of which is to fund structural initiatives rather than small projects. We applaud that initiative but feel it still falls short of Savoie's somewhat tentative recommendation.

The communities' under-development in many areas and lack of equitable access to the benefits Canadians are entitled to expect are in part a function of the blatant shortfalls in evidence within the Francophone and Acadian institutional infrastructure. This fund is an important means of making up for this institutional deficit insofar as its use is conditional on major investments coupled with significant coordination efforts that combine federal initiatives with provincial and private-sector initiatives. Its objective will be to complete the institutional network in Francophone and Acadian communities.

27. We recommend that the funding envelope recommended by Mr. Donald Savoie be increased to \$100 million over five years and be used solely as a lever to generate key institutional infrastructure projects in the communities. These projects would be initiated jointly by the federal institutions and community players in the corresponding sectors (health networks, centres of excellence in economic development, centres for research in new communication technologies and Francophone universities and colleges). We recommend that very specific access criteria be developed, including the criterion that *every dollar of investment from this catalyst fund be tied to a minimum investment of four dollars* by the federal department or institution responsible for the issue in question, in order to ensure a multiplier effect. This fund would be called the "Francophone and Acadian Institutional Network Infrastructure Fund".

The benefits of the fund will be channelled through the network of institutions involved in each key sector in order to pay for the development of institutional and organisational networks within the communities. The fund will be administered by the Privy Council Office, which has authority over all federal institutions. The Department of Canadian Heritage does not and cannot have the authority to manage a government-wide initiative of this nature; its record since 1988 clearly shows that it has neither the corporate authority nor the will. The principle of full application of the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms* demands government systems that are reliable, vested with appropriate corporate authority and funded over long periods.

We underscore the very clear distinction between this fund, which is meant to enable federal institutions to undertake new initiatives and new programs aimed at completing the institutional network in Francophone and Acadian communities, and the \$500-million trust fund to provide financial support for associations which we recommended in section 4.6.5.

It is also evident that one of biggest shortcomings of the August 2, 1994, strategy for implementing Part VII of the *Official Language Act* was the directive that the strategy be applied by institutions without any new funding. The issue of funding for the application of section 41 within federal institutions is complex, especially in the context of budget cuts. Remember, however, that in the *Beaulac* ruling, the Supreme Court of Canada stated that "administrative inconvenience is not a relevant factor" that can be used to justify denying the constitutional rights of Canadian citizens. Based on that and other rulings, it can be concluded that the government's attitude toward funding was neither administratively wise nor consistent with the constitutional framework that sets the parameters for its decisions and policies.

In the course of his analyses of the implementation of section 41, the Commissioner of Official Languages defined six elements which had to be addressed if the institution wished to comply with the Act. Those elements are the political framework and quality of leadership; the quality and adequacy of the implementation strategy; the desired results; the quality of the management and performance verification systems; the accountability framework; and changes in the corporate culture to integrate the values underlying the requirements of Part VII. So many ministers and deputy heads are fooled: this is an onerous task that demands a clear vision of the approach to be taken, a firm commitment to succeed and access to vast resources.

When it launches a major strategy, the government normally sends out clear signals and invests a great deal of money. Why did it not do that for the August 2, 1994, strategy for implementing Part VII? Better late than never. The necessary resources have to come from two sources: an additional appropriation from the Consolidated Revenue Fund and reallocation of the current budgets of each institution.

- 28. We recommend that the Government of Canada allocate funds for application of Part VII to each of the 128 federal institutions identified by the Commissioner of Official Languages and issue a clear and unequivocal directive concerning the budget reallocations that must be made and the organisational transformation that must accompany them.**

The cavalier attitude of the deputy heads of many federal institutions toward their obligations under section 41 is partly attributable to a lack of enthusiasm or understanding. The federal government has tied its deputy heads' performance bonuses to achievement of its strategic orientations. If it wanted to convey its commitment in an effective way, it would tie the bonus to full attainment of the objectives of section 41, which is, after all, not only a basic strategic orientation, but also a quasi-constitutional requirement.

- 29. We recommend that progress in implementing section 41 and attainment of the desired effect on community vitality and the recognition of French in Canadian society be linked to the performance appraisal of the deputy head of each of the 128 institutions concerned. Payment of half the performance bonus over the next five years should be dependent on that appraisal.**

9.1.4. Training and Transformative Evaluation⁶¹

We agree with Donald J. Savoie that the Canadian Centre for Management Development has to incorporate into all its courses a training module on section 41 of the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*. This is an essential measure, but it alone will not suffice. The exemplary experience of the Department of Western Economic Diversification clearly shows that the most effective way of raising awareness among public servants is to undertake a transformative evaluation in each institution.

A transformative evaluation includes an interactive and intensive series of individual and group discussions with institution directors, managers and professionals and with sectoral representatives from the communities. This type of evaluation produces a profile of the institution's achievements, of course, but more importantly, it sparks a process of collective reflection that enables public servants to grasp the nature and scope of their responsibilities and encourages them to devise policies, programs, structures and strategies likely to ensure full attainment of the aims of the Act.

This approach was the springboard that enabled Western Economic Diversification to fulfil many of its responsibilities under section 41. Without an exercise of this type, public servants will never be able to understand the scope of the Act or their role in applying it. Institution directors will be unable to design appropriate programs, structures and strategies. The sad inability, if not the refusal, of most institutions to make the changes needed to apply section 41 speaks volumes about the need to use strong approaches like transformative evaluation.

- 30. We recommend that the Community Development Secretariat undertake a sweeping initiative to raise awareness among the employees of the 128 targeted institutions of the requirements of and the program for applying section 41 by:**
- a) organising and completing a transformative evaluation in each of the 128 institutions by the end of 2000; and**
 - b) integrating, in cooperation with the Canadian Centre for Management Development, a module on section 41 and the other constitutional provisions into all its training programs.**

⁶¹ "Transformative evaluation" is a type of evaluation that transcends the traditional boundaries of the determination of quality of work and becomes a strong catalyst for change and new direction in the organization.

9.2. Highlights of the Fontaine Report

In response to criticisms and a specific recommendation from the Commissioner of Official Languages regarding the impact of government changes and devolution, the President of the Treasury Board directed the *Task Force on Government Transformations and Official Languages*, which produced the Fontaine Report, to analyse the transformations from an official languages standpoint and recommend any appropriate improvements. We agree with the general thrust of the report but find that the recommendations for improvements are somewhat scattered and tentative.

We agree fully with the suggestion that communities have to be consulted before the government makes any major organisational changes. We are pleased with the recommendation of a review of the Treasury Board Secretariat's Framework for Alternative Program Delivery in order to determine whether the objective of the official languages policy is being adequately integrated. However, we believe the recommendation on awareness among public servants is too passive (see transformative evaluation in section 11.1.4).

The recommendation that the federal government take advantage of the proposed transfers of responsibilities to urge the provincial and territorial governments or their agents and the private sector to cooperate in community development is in our view completely inadequate. It is crystal clear to us that mobilising the provincial governments in this direction ought to have been an integral part of federal government practices since 1969, even more so since the *Canadian Charter of Rights and Freedoms* and the 1988 *Official Languages Act* were adopted. It is high time the federal government developed a comprehensive strategy for mobilising the provincial governments and the private sector. Moreover, the federal government has to ensure that coercive measures are included in any agreement as a way of ensuring that the provincial governments keep pace. It includes such measures in health agreements, withholding transfers to provinces that make decisions which conflict with the principles of Canada's national health policy.

The Fontaine Report merely skims the surface of options and remedies. We agree with the Commissioner of Official Languages, who wrote in his 1998 annual report that an adequate remedy must include the possibility of appealing to an impartial third party that is vested with the proper authority and the necessary expertise and is readily accessible to the public.

9.3. Commissioner of Official Languages Reports

In his annual reports, the Commissioner of Official Languages has repeatedly documented the failings of and weaknesses in the Government of Canada's support for community development and vitality and the promotion of equality of status for English and French. We are grateful to the Commissioner for generally contributing to the process of government building as he did in his watershed report *A Blueprint for Action*, for example. However, we believe that he should have been a great deal more forceful and that he tends to play down the adverse effects of government policies and practices. We strongly urge his successor to be bolder and tougher in his analyses and initiatives.

The Commissioner of Official Languages comments on the relative viability of French-language services based on the range of services already available in the provinces. He generally avoids making reference to sectors where there are no services. His silence on unserved sectors tends to undermine his views as a whole. That silence also helps legitimise the asymmetry in federal support for the Anglophone community in Quebec and support for the Francophone and Acadian communities. By omission, he gives the impression of validating the absence of some governments in sectors that are vital to communities, and that simply perpetuates the imbalance and the serious asymmetry in services.

Two statements by the Commissioner of Official Language are of particular concern.

He wrote in his 1997 annual report that through the previous ten years of transformations, the approach taken by federal authorities had contributed to the *subtle but cumulative erosion* of language rights throughout Canada. We object to the word "subtle". Whole groups of community services were removed from application of the Act because of those transformations. There is nothing subtle about that. The impact on communities has in fact been dramatic. The Commissioner likes to underestimate the devastating effect of practices he considers inadequate and does not always grasp the nature and scope of the resulting socio-cultural loss. What that does is help mask the scope and magnitude of the adverse effects of the government practices in question.

31. We recommend that the Commissioner of Official Languages compile an inventory of French-language services and institutions in all areas of the lives of Francophones and Acadians, identify voids and shortfalls to be rectified, and determine the remedies to be taken, including the recommendation of new institutions and services in under-resourced sectors, in order to comply with letter and the spirit of Canada's official languages policy and reverse the gradual erosion of the communities.

The Commissioner's 1998 annual report states, "The Commissioner, believing that the transfers of responsibility that have already taken place are irreversible (although he remains hopeful that the agreements concluded can be improved), has discussed with his colleagues the provincial and territorial ombudsmen (who exist in eight provinces and two territories) the possibility that they might gain jurisdiction in this regard, if they do not already have it. All of what has until now existed at the federal level is simply not preserved or reproduced at the provincial/territorial level." We very much like the Commissioner to have a quiet chat with the provincial ombudsmen; he should also endeavour to better educate their bosses, the premiers and the legislatures. But most importantly, we find it inconceivable that the Commissioner should give up in the face of the transfers of responsibility that have already occurred, transfers which ignore almost completely the policy on official languages. We challenge his claim that the agreements cannot be changed, as that would be unacceptable in a democratic state.

We call on the Commissioner of Official Languages to adopt a stronger and more proactive attitude and recommend that he make full use of all the instruments he has been given by Parliament. The Commissioner has the following powers and instruments at his disposal:

- ☐ the power to educate and raise the awareness of the ministers, deputy heads and staff of the 128 institutions;
- ☐ the power to educate and raise the awareness of the provincial governments;
- ☐ the power and responsibility to evaluate the actions of the federal government as a whole and each federal government institution;
- ☐ the duty to report annually to the Parliament of Canada;
- ☐ the power to support communities' demands where they are in line with the intentions of Parliament;
- ☐ the power to investigate specific matters, such as transformations;
- ☐ the power and duty to investigate and effectively resolve complaints from members of the public and government employees;
- ☐ the power to refer matters to the Federal Court of Canada and intervene in proceedings initiated by Canadian citizens;
- ☐ the power to inform the Canadian public about the federal government's performance.

32. We recommend that the Commissioner of Official Languages take a more rigorous approach by using the full breadth of her powers and the full measure of the instruments made available to her by Parliament, including the power to support proceedings initiated by Canadian citizens in the Federal Court of Canada.

Some of the people we spoke to urged us to recommend that Parliament give the Commissioner of Official Languages broader coercive powers. After careful consideration, we concluded that responsibility for full application of the official languages policy rested first with governments and not any type of monitoring agency. We further believe that the performances of our commissioners of official languages have varied because not all chose to make full use of the powers and tools available to them. This variable and at times nebulous resolve has outraged more than one community member over the years. The result is that there is an entire effectiveness curve to get past within the current legislative context, and the challenge is now laid before the new Commissioner.

We stated earlier that responsibility for applying the official languages policy, which includes the *Canadian Charter of Rights and Freedoms*, the *Official Languages Act* and all material arising from those instruments, rests with the Canadian State, which includes not only the Government of Canada and all its institutions, but also the provincial and territorial governments and all their institutions. The Commissioner's mandate is therefore not limited to the federal government. While we do not make a recommendation because we believe that the matter still needs some thought, we open the debate as to whether the mandate of the Commissioner of Official Languages should be expanded to include review of the application of the official languages policy by the provinces. One thing is certain: the provinces have never felt particularly concerned about Canada's official languages policy and the constitutional framework which governs it and have chosen not to acquire the tools needed to apply it fully.

We also make the point that Francophones and Acadians have lost almost all faith in the complaints procedure under the *Official Languages Act*. The OCOL has adopted a complaint-based approach to managing expectations along with a protocol for investigating federal institutions that, on the pretext of equitable treatment of public servants, has drawn the process out to a degree that is simply unacceptable. OCOL investigators have allowed themselves to become bogged down in the bureaucratic complications and pretexts served up by institutions to justify their failure to comply with Part IV and Part VII of the Act or Part V and Part VI with regard to language of work and representation within the Public Service. Complainants have ultimately discovered that the only real outcome of their complaints has been their own exhaustion, if not their denigration. Any argument seems to be justified in order to defer a decision or exonerate institutions. Francophones have grown disenchanted and disinterested; they have for all intents and purposes abandoned the complaints mechanism that once offered such tremendous hope.

33. We recommend that the Commissioner of Official Languages be firmer and more forthright in dealing with complaints and that she overhaul the OCOL's practices and procedures for handling complaints by replacing the current "complaint management" approach with an approach that ensures quick, effective and lasting solutions and, more importantly, is consistent with the spirit and scope of the Act.

The new Commissioner of Official Languages recently completed a study of Government of Canada initiatives pertaining to the use of French on the Internet. Francophones and Acadians are only just beginning to grasp the scope and magnitude of the impact—and the potential—of these new communications technologies on community vitality and the ability of communities to embrace those technologies, not to mention the impact on the full recognition of French in Canadian society. We share the Commissioner's view that Canada has to develop and implement a strategy to foster the creation of a French-language presence on the Internet and support all of her recommendations.

34. We recommend that the Government of Canada conduct a study of the impact of new communications technologies –from such key perspectives as electronic commerce – on the dynamics and vitality of Francophone and Acadian communities in order to determine the key issues and identify options for using those technologies as means to enhance community development, and that it develop and implement an appropriate strategy.

The Commissioner of Official Languages' current budget does not allow her to fully exercise her mandate. It is essential that the Government of Canada adjust the Commissioner's budget to give her the resources and expertise needed to carry out the array of analyses, studies and evaluations required to properly fulfil her mandate. Moreover, the Commissioner does not have the necessary funds to publish reports on the few studies she has managed to conduct and communicate her findings and recommendations; this reduces their scope and effectiveness to an unacceptable and dangerous degree.

35. We recommend that the budget allocation to the Commissioner of Official Languages be increased sufficiently to enable the Commissioner to fully carry out her mandate and effectively communicate the results of her investigations and the light they shed on official languages issues.

We welcome the Commissioner of Official Languages and while reminding her that she has to do more than just observe; unlike her predecessor, she cannot watch from the wings. She has to reaffirm her role as an educator of and adviser to senior federal and provincial officials and a qualified monitor of their actions and omissions. Most importantly of all, she has the happy lot, through comprehensive studies and analyses, of allowing us to dream, of showing us the way to real linguistic equity in Canada. She also has a duty to use all the means at her disposal to ensure that governments understand, accept and perform.

9.4. Retroactive Changes to Agreements on Restructuring and the Devolution of Powers

The Commissioner of Official Languages, Savoie and Fontaine all deplore the restructuring and devolution of responsibilities that have taken place with disregard for the federal government's responsibility to comply and ensure compliance with the aims of the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*. There are calls for all future agreements in these areas to include obligations regarding implementation of the Act and appropriate recourse to some federal authority. The Fontaine Report recommends that retroactive changes be made to agreements that have not gone far enough in considering the government's duties under the Charter and the Act.

These are excellent measures, but they still fall far short of the mark. Restructuring and the devolution of responsibilities have had and will continue to have devastating effects on communities. The government's conduct in this area is in an odd way like a constitutional offence. It is essential that the Government Canada take a few steps back and renegotiate each of these agreements as quickly as possible in order to integrate the measures needed to accurately reflect the aims of the Charter and the Act by resolving the flaws and adopting compensatory measures that will reflect the real scope of the harm done and the losses incurred.

Take as an example the reorganisation of CBC television made necessary by deep budget cuts since 1990. The changes led to the elimination of all regional programming and the closure of some stations. The inexcusable lag of several years between the time Newsworld went on the air and RDI began broadcasting caused serious damage. Where was the constitutional principle of equality of status between the two official languages when the people in charge at the CBC made those decisions? Is it possible to calculate the losses and damages sustained by communities over the past decade? How can we ignore the role these disgraceful actions, which are at odds with the government's statutory obligation, have played in weakening the Francophone and Acadian communities? How can anyone be so brazen as to say that these changes are permanent and nothing can be done to change direction? Are we looking at a

complete lack of concern—or, dare we say it, bad faith—on the part of the Government of Canada?

Fortunately, for the first time in a long time, the Canadian Radio-television and Telecommunications Commission (CRTC) came out in strong defence of the regions during the recent public hearings on renewal of the CBC's licences. CRTC chairperson Françoise Bertrand, took CBC executives to task over the issue of regional programs, recalling them one by one. We very much hope that the CRTC will apply its new understanding of communications-related constitutional imperatives to the cable industry and make a significant change of direction regarding policies and licences regulating the broadcast of French-language programs by cable companies.

36. We recommend, for any future devolution or transfer of federal responsibilities to the provincial governments or the private sector:
- (a) that the agreement concerned contain specific provisions guaranteeing compliance with and enforcement of Canada's official languages policy, including penalties and compensation for any violation thereof;
 - (b) that a mechanism be established to ensure the ongoing participation of the Francophone and Acadian communities in any agreement's development and implementation;
 - (c) that the federal government, together with the provincial and territorial governments, develop a comprehensive federal-provincial framework agreement which would be signed in order to achieve the purpose of the language rights set out in the *Constitution Act, 1982* and the *Official Languages Act*, in particular Part VII of the latter;
 - (d) that the federal government meet with the private businesses and agencies granted government mandates over the past decade to inform them about the fundamental aspects of the official languages policy, including the implications of the *Official Languages Act* and *Canadian Charter of Rights and Freedoms*, to define a "federal government - agencies/businesses" framework agreement for the implementation of the official languages policy;
 - (e) that the federal government withhold transfers to the provinces and territories, and payments to private businesses and agencies, which do not take adequate measures to comply with the letter and spirit of the language provisions of the *Constitution Act, 1982* and Canada's official languages policy.

It is clear that a process needs to put in place to ensure that all proposed government changes and all draft legislation comply with the official languages policy. We believe that a coordinating group as suggested by the Fontaine Report would be of limited use. There are already examples of better methods within the government. Status of Women Canada reviews all draft legislation, policies and major changes to determine

the potential impact on the status of women in Canada and compliance with policy, although SWC cannot do anything more than suggest amendments. It is essential that the Community Development Secretariat be vested with the authority to impose on any draft legislation or proposal for government changes the amendments required by the constitutional framework

37. We recommend that the Privy Council Office's Under-Secretariat for Community Development be given a mandate to create a permanent consulting group of representatives and specialists from the Francophone and Acadian communities to jointly:
- a) conduct a systematic review of all legislation, policies and proposals for major changes approved or introduced over the next ten years; and
 - b) monitor on an ongoing basis all draft legislation and proposals for change, devolution and privatisation;
- in order to determine the ability of the government to fully meet the aims of the *Canadian Charter of Rights and Freedoms* and the objectives of the *Official Languages Act*, and to identify the current and potential impact of those aims and objectives on community development and promotion of the status of French.
- Furthermore, we recommend that the Under-Secretary be given the administrative responsibility and corporate authority to devise and recommend to Cabinet remedial measures and any appropriate changes and adjustments.

9.5. Respect for and Advancement of Language Rights and the Road to Equality

We believe that the Supreme Court of Canada's ruling in *Beaulac* earlier this year establishes a new framework for interpreting the language rights of Canadians and the obligations of the government, particularly when one also considers the Court's recognition in its ruling on the secession of Quebec that the protection of minorities is part of the foundation of Canada's entire constitutional structure. This goes a long way toward increasing the chances of success of future proceedings aimed at correcting the injustices and repairing the damages caused by past government actions and omissions, whether those proceedings are taken in the Federal Court of Canada or in lower courts. We reiterate a key statement, a statement that could not be any clearer, from this landmark decision (p. 3) handed down on May 20, 1999, which puts the preceding discussion into perspective: "Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada."

38. We urge enlightened Canadian citizens, in particular those who care about the fate of official language minority communities and want to contribute in a significant and lasting way to building a Canada of which we can all be proud, to use the Court Challenges Program to develop test cases in the area of constitutional language rights and the extension of those rights. We also urge these Canadians to find the necessary courage and determination and make the effort to bring before the courts, the Federal Court of Canada in particular, major actions under section 24 of the *Constitution Act, 1982* in order to obtain for those communities justice, restitution and equal opportunity and to put an end to a practice that has been used too widely by one Canadian government after another. That practice, which borders on tradition, consists in not living up to their linguistic obligations when the time comes to strike agreements with the provinces, as eloquently demonstrated, for example, by the agreement on the social union and the agreements on labour market development, including their enabling legislation, the *Employment Insurance Act*. It also consists in too often hiding behind bureaucracy and “administrative inconveniences” to justify sporadic, partial and parsimonious implementation of the language rights of Canadians.
39. We recommend that the Fédération des communautés francophones et acadienne du Canada undertake a comprehensive analysis of cases in which remedy can reasonably be sought from the Federal Court of Canada, including cases of inappropriately designed devolution and transfer of federal programs, and that it prepare the cases and institute appropriate proceedings for the correction of problem cases and restitution. We also recommend that the Commissioner of Official Languages energetically support Federal Court challenges initiated by Francophone and Acadian authorities.

For ordinary citizens, a court challenge is a major undertaking. The undertaking is especially difficult when the issue is language rights. First, the violation of a language right usually entails fairly small or limited personal injury—no or poor government service in the individual’s language, for example—compared with cumulative collective injury which is normally serious and has grave long-term consequences. Second, the battle is very lopsided, because the Attorney General does not face the same budget constraints as John Q. Public and has a full arsenal of legal and other experts. John Q. Public cannot afford to pay a lawyer the going rate, even with financial support from the Court Challenges Program. Third, the battle is long, often very long, which is why almost no Francophone parents whose children’s education rights were violated by the government of their province have reaped the benefits of their court actions, despite the extraordinary personal effort that may have been required. Many parents told us that

their children finished high school in English before a French school was built in their community. Fourth, the battle is hard because negative social pressure from family and friends for failing to observe the acceptable standard of behaviour can be very strong and difficult to bear. Fifth, when an individual's case is strong, it sometimes takes a heroic effort not to give in to pressure from his or her own lawyer and "the system" to come to a settlement. When a linguistic dispute is settled out of court, the individual may win, but Canada and Canadians are denied a precedent-setting decision, and that does nothing to further language rights.

Two other major problems come into play. First, defending language rights is an increasingly complex undertaking. Demonstrating under section 23 of the *Canadian Charter of Rights and Freedoms* an applicant's right to a French school because the number of eligible children in a given municipality warrants a school is not all that complicated when there is no French school in or within reasonable proximity to the community. However, when there is a French school that operates under a French school board, showing that the teaching tools and financial resources made available to that school are not enough to allow the school to carry out its mission to stem the gradual erosion of the minority in the community can be a particularly complex and difficult undertaking, especially when the other side is armed to the teeth with experts. It is an undertaking that represents a major challenge when you also have to show that, in the case of a minority school that also has a related cultural and community mission, it is also essential that kindergarten and daycare be included. And when the time comes to calculate the scope of the cumulative effect of the violation—or worse, the partial, half-hearted implementation—of a language right over two or three decades and determine what redress and reparations would be appropriate, the complexity and difficulty increase tenfold because this is uncharted territory in the field of language rights. In short, the means are not there. The Court Challenges Program, despite its good qualities – a shining example for the rest of the world of how civilised we have become in Canada – is simply not geared to handle the situation and is currently unable to meet the need.

Of course, there would be no problem if the government lived up to its obligations. There would no such burden on the public if the government did its duty. We firmly believe that the federal government has a moral responsibility to provide citizens with the support and resources they need to be able to take this kind of action. In education, for example, the development of cases like these requires the cooperation of a team of experts from many fields who can identify the different aspects of the gradual erosion of minorities, determine the cumulative effects and calculate the cost of reparations.⁶² The Court Challenges Program is the preferred option for this process, although it still needs to be strengthened.

⁶² Such actions cost in the tens, if not hundreds, of thousands of dollars and require input from highly skilled legal experts.

40. We recommend that the mandate of the Court Challenges Program be broadened to include provincial language policies, which are mostly extensions of constitutional language rights. We also recommend that the program's financial resources be increased sufficiently to allow the program to actively support and equip community applicants so that they can mount strong cases to effectively seek "such remedy as the court considers appropriate and just in the circumstances" (section 24 of the *Canadian Charter of Rights and Freedoms*).

9.6. The Relevance of Delegation of Federal and Provincial Responsibilities to the Communities

The flurry of devolution and privatisation currently under way suggests that thought be given to the option of "diagonal" delegation, that is, transferring to Francophone and Acadian communities responsibility for managing and delivering government programs and services. This could be an unexpected opportunity to strengthen the communities' institutional network by enabling them to live the old adage, "if you want something done right, you are best to do it yourself". It might also be a false lead, one that would ultimately see communities taking on the onerous task of fulfilling government responsibilities without the proper means. We consider this option in order to determine its relevance and identify the underlying principles and the appropriate terms and conditions.

Delegating to community entities – institutions, organisations, associations or businesses – responsibility for some federal programs or services is one of the methods being considered more and more by the Government of Canada in its quest to diversify service delivery, presumably with an eye to improving the quality and efficiency of services to the public. Some community organisations, in particular the Société franco-manitobaine, like the Fontaine task force and the Commissioner of Official Languages, have recognised the merit in exploring diagonal delegation as an alternate means of delivering public services to communities. Some federal institutions (the Department of Human Resources Development of Canada, for example) seem to have taken the lead in that direction.

Diagonal delegation is being done haphazardly, which presents some risk for the communities and the State alike. It is therefore important to quickly identify the circumstances that would justify delegating the delivery of a government program or service to a community entity, including the characteristics of the specific community entity, the conditions that would have to exist and the terms of application that would ensure that delegation is appropriate, particularly with regard to the *Official Languages Act*.

The idea of delegation raises a number of questions that have to be answered. For example:

- a) **When responsibility for delivering a program or service is transferred to communities, is the federal government's fiduciary or statutory responsibility for those areas of activity preserved?**

We believe it is essential that, for the purposes of the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*, the government's fiduciary responsibility not be diminished so that language rights are not weakened.

- b) **Is it desirable or wise to help transform organisations which represent the communities into cost-recovery agencies or private enterprises, insofar as that is in fact the case, and what are the consequences? Are there more appropriate alternatives? If not, are there terms and conditions of application that are sufficiently favourable and suitable?**

These questions are sparking debate in some communities because the mission of a community organisation is seriously compromised when that organisation takes on the additional role of a service provider. There are some who believe that this is an appropriate way of making the organisation's legitimate activities financially self-sufficient. Others hold fast to the view that this approach weakens community vitality by undermining the organisation's ability and freedom to promote the interests of the community in a context of incompatibility between the principle of the quest for profit or the role of carrying out government policy under a contract and the principle of community development and socio-political representation. The solution may include "institutional procreation", that is, the creation by the network of associations of a range of instruments, businesses and institutions that would ensure institutional completeness.⁶³

It is important to be wary of the poison pill, however. We believe that it would be very dangerous for a community organisation to enter into such a contract for services on its own because there is no more effective way to neutralise its right to speak and its responsibility to provide effective representation. The concept of partnership may be fashionable, but the government has let us know how it views that approach; only rarely has the government actually shared power and governance in a partnership.

⁶³ The concept of institutional completeness is crucial in efforts to stop the erosion of communities and build a new collective reality.

- c) **What guarantees have to be provided to ensure that diagonal delegation does not become a shirking of responsibilities by a federal institution or, in cases of devolution, by the provincial counterpart?**

Some community members are in fact afraid that diagonal delegation is nothing but a somewhat more refined, if not devious, way for the federal government to abdicate its responsibilities and thus force the communities to bear the burden of federal responsibilities that have gone largely unmet, and to do so without adequate resources. We believe that diagonal delegation is a viable option provided it is done out in the open. However, the delegation agreements have to be iron clad and must guarantee the provisions and resources that are essential to success, including adequate long-term funding, especially since history shows that the government often follows up this type of agreement with decreases in funding levels.

- d) **Notwithstanding the question of ensuring the resources that are essential to equal quality of service in the short and long terms, will the amounts transferred to organisations with delegated responsibility to deliver a federal service be enough to cover their actual operating costs?**

There are some who fear that the feasibility of these activities is just an illusion and that in a context where community organisations are being urged to strive for self-sufficiency and federal institutions, which have considerable bargaining power, are looking to minimise their costs, activities will in the end have to be subsidized with volunteers and other funding sources to which organizations have access. Communities are seeking assurance that there is the potential to generate a reasonable surplus on all routine expenditures to offset the extra fixed costs. They are also seeking assurance that the funds needed to fill the gaps created by historical government inaction in these areas will come with the agreements. And there will have to be funding formulas that are sufficiently flexible to allow the organizations to meet needs that change as they grow. Governments have the nasty habit of ignoring collateral costs when determining the eligible costs on which transfers are made to their partners under agreements of this type. They are inclined to have their partners bear the risk of growing needs or an increase in population by using funding formulas that are cast in stone for a predetermined period (five years).

- e) **To what extent will the terms and conditions of diagonal delegation ensure the sustainability of this method of service delivery?**

Obviously, diagonal delegation is very appealing to many officials of organisations and federal institutions in light of their own particular interests and that it also holds out promise of positive impact on community vitality. It is essential, however, to ensure that the terms of delegation make it possible to

anticipate that the selected entities can deliver the services for many years, perhaps even decades. This will not happen by magic, even less so by osmosis: it is vital that thorough analysis and planning be coupled with efforts to generate organisational capacity and human expertise.

- f) **Have the Government of Canada or the main departments using this approach, such as Human Resources Development Canada, developed an appropriate framework for delegation to official language minority communities, and have they identified cases of diagonal delegation and devised and implemented a system to monitor delegation by those institutions or by provincial institutions to which they have transferred responsibilities as part of the wave of devolution of programs and services?**

We believe it is essential that the Government of Canada and community organisations act with full knowledge of the facts in this area and that the government be able to fulfil its fiduciary responsibility, with data to back it up. Treasury Board has adopted an alternative service delivery framework that will serve to guide departments in respect of a wide range of innovative organisational formulas (including privatisation) which the government could use to deliver its services more efficiently. Treasury Board does not seem to have anticipated diagonal delegation in all its forms, particularly with regard to Francophone and Acadian communities. That is something it has to do.

- g) **Does delegation to communities raise public administration issues like accountability?**

In his most recent report, the Auditor General expressed concern that some alternative service delivery methods might be weak in terms of transparency, protection of the public interest and accountability. This prospect will have to be considered and the necessary measures taken, bearing in mind that respecting language rights is very much in the public interest.

We think that these questions have to be analysed in greater detail by both the communities and the government in order to clearly define and validate the types of delegation to Francophone and Acadian communities that are appropriate models for diversifying the range of methods of delivering federal and provincial programs and services, including in relation to the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms*. We believe that, insofar as delegation to community institutions and not community organisations is subject to strict standards on all fronts, it is desirable because it is a great opportunity to strengthen and complete the institutional network in Francophone and Acadian communities.

41. We recommend that the Government of Canada give the Privy Council Office a mandate to:
- a) adopt diagonal delegation of programs and services to Francophone and Acadian communities as an alternative to devolution to the provinces and ensure that that type of transfer is subject to a very specific set of criteria, among them retention by the government of its fiduciary and statutory responsibility; a transitional phase coupled with appropriate training programs to ensure development of the necessary institutional or community capacity; sufficient funding provided under appropriate terms and conditions; and a structure appropriate to the process, including accountability mechanisms;
 - b) undertake a study jointly with the main representatives of and a sample of institutions in Francophone and Acadian communities to establish the conditions conducive to delegation and the accompanying principles, terms and conditions, and criteria;
 - c) undertake jointly with the main representatives and a sample of institutions in Francophone and Acadian communities a comprehensive analysis of the actual cost to the Crown of ensuring the delivery of pertinent programs and services, making sure that the results of the actuarial analysis are consistent with the government's *Public Accounts*, which will provide both the Crown and the communities with an objective frame of reference for adequate funding levels to ensure quality delivery of the programs and services in question, including coverage of fixed and collateral costs;
 - d) develop and implement an orientation and involvement strategy for federal institutions that covers the aims, responsibilities, terms and conditions, criteria and time frames associated with diagonal delegation to Francophone and Acadian communities;
 - e) initiate discussions of this nature with the provincial governments regarding their areas of responsibility.

9.7. Community-Oriented Research and Development

To ensure their development and especially to stop their erosion, the communities must have access to a body of data and analyses to which they do not currently have access because they lack the resources and the means. Many researchers in bilingual universities and associations have conducted key studies over the years, but those and many other budding researchers do not have access to sufficient resources to produce a refined and comprehensive profile of Francophone and Acadian communities that would provide insight for all the decisions that need to be made in order to check their gradual erosion and ensure their growth and vitality.

Canadian Heritage carries out studies, but the premises and conceptual framework often leave much to be desired. It is essential that the government use the various tools at its disposal to support a body of independent research managed and conducted by the community and community institutions.

Francophones and Acadians need a thorough understanding of all the social, cultural and political factors that have a bearing on their ability to take charge of their own development. The Social Sciences and Humanities Research Council of Canada exists specifically for this type of research and has been given considerable financial resources. Unfortunately, the SSHRC takes very little interest in issues of concern to Francophones outside Quebec.

The economic viability of Francophone and Acadian communities depends on their access to solid expertise in areas related to economic development, including community-based economic development and cooperatives, exports, development of leading-edge and knowledge-based industries, and new information technologies. Needless to say, the communities' perspectives are closely linked to their ability to get involved and become key players in sustainable economic development, and applied research is a very good way to meet that objective. It is essential that support be provided for important players in Francophone and Acadian knowledge-based institutions and that Francophone centres of excellence be created. In addition to putting the communities on the leading edge of technology and knowledge, these mechanisms will make it possible to promote Francophone knowledge, expertise and products nationally as well as internationally.

The government has set up a number of bodies, among them the Communications Research Centre, the International Development Research Centre, the Medical Research Council of Canada and the Social Sciences and Humanities Research Council, to provide Canadian society with the intelligence and expertise it needs to pursue its national objectives in all fields. These bodies must contribute to the development and growth of Francophone and Acadian communities, just as they serve society as a whole.

42. We recommend that the Government of Canada implement a general research strategy in support of Francophone and Acadian community development by:
- a) making a commitment to the principle of independent research as a preferred means of supporting research in minority communities;
 - b) creating within the Social Sciences and Humanities Research Council of Canada a budget envelope dedicated to Francophone and Acadian research; this envelope would be managed by a research subcommittee made up of university, college and community representatives;
 - c) setting specific research objectives for each of the other research bodies available to contribute to the development of Francophone and Acadian communities;
 - d) providing financial support and promoting the idea of creating a Francophone-managed network of centres of excellence in research and development covering all key aspects of community development, including sociocultural issues, economic development, communications and health;
 - e) allocating the human and financial resources needed to promote and facilitate the design of research proposals and projects.

10. Conclusion

At the time I gave my address in the Senate on June 17, 1998, I had underestimated how difficult it would be to determine the scope and nature of the problems associated with Francophone and Acadian community development and the recognition of French in Canada. The ongoing analysis (and I mean ongoing because it will never be completed) and the production of this report gave me a great deal more insight into the dynamics and factors that have contributed to the current state of affairs described in this manuscript. I must confess that, in spite of my thirty years of involvement in this area, my understanding was still only patchy, but this understanding gave me a better appreciation of parliamentarians who have trouble grasping the complexities of the issue.

This study also gave me insight into the nature and importance of the issues associated with the development and vitality of our communities and the full recognition of French. This issue is a central part of the Canada that almost the entire world praises as a model of civic-mindedness and respect among individuals and communities.

This project also allowed me to see the weakness of our individual and collective memory and to remind myself of the richness memory can bring to affirmation, pride and, most importantly, thoughtful, thorough, effective and exciting action. To deal with the present and face the future, we need to know and understand the past.

Above all, this analysis enabled me to discover and rediscover the richness, skill, courage and vision of countless Francophones and Acadians and politicians who sometimes managed to go beyond the ideas of community leaders (Mr. Hatfield, for one). Make no mistake: Francophone and Acadian communities are not the only ones which have benefited from the often-underestimated strength of their citizens; Canadian society as a whole has emerged richer and stronger. There is reason not only to celebrate and to get to work to meet today's challenges. And of course we must have pursue our analysis.

What can we do to assist Francophone and Acadian communities to achieve the reality of a normal, vibrant community? Where do we stand in terms of the recognition and use of French and the linguistic development needed to stem the decline of Canada's Francophone and Acadian communities and rekindle their development? What obstacles lie ahead? What challenges have to be met in order to attain this national objective? What means can we use to achieve success? Who is responsible: the federal government alone, or Canadian society as a whole? These are just some of the questions that Canadian leaders must consider and that have to be answered clearly, completely and quickly. Any delay in taking corrective and compensatory action would only cause more damage.

Over the past fifteen years under Canada's official languages policy, the Government of Canada has sought to put its mind at ease and make sure everything looks good on the outside instead of showing political leadership and taking the necessary measures, even though they were readily available, to carry out its mandate as a trustee of the rights and vitality of Canada's Francophone and Acadian communities and the full recognition and status of French in Canadian society.

Francophone and Acadian communities have contributed a great deal to the development of Canadian society. They may be weakened, but they are not ready to give up; in fact, they want to acquire more resources so that they can make their revitalisation a reality.

Majority Canadians definitely support the concept of linguistic duality and the transfer to Francophones and Acadians of the resources and institutions that will enable them to develop and grow. The government has the political room and the public support to take action.

The Government of Canada has an undeniable responsibility to legitimise its conduct by adopting policies, strategies and programs that will enable it to fully support the imperatives created by the *Canadian Charter of Rights and Freedoms* and the *Official Language Act*. All these components of the Canadian State, including provincial and municipal governments, are under an obligation to fulfil their constitutional duty. Let them get to work.

We call on government leaders of every stripe to consider this pearl of wisdom from prominent thinker and politician Vaclav Havel, President of the Czech Republic, who wrote in his essay *Paradise Lost*:

Those who find themselves in politics therefore bear a heightened responsibility for the moral state of society, and it is their responsibility to seek out the best in that society, to develop and strengthen it . . .

We believe it is normal to contend that the moral state of Canadian society includes the vitality of Francophone and Acadian communities and the equality of status and use of English and French in Canada. We believe it is also normal to expect federal and provincial political leaders to recognise their responsibilities and do what they must to ensure that all Canadians, including Francophones and Acadians, are able work together to bridge the gap from oblivion to the rule of law demanded by the natural flow of our common history.

Appendix 1: Motion of Inquiry by the Honourable Jean-Maurice Simard in the Senate on June 17, 1998

Official Languages Act

PROGRESSIVE DETERIORATION OF FRENCH SERVICES AVAILABLE TO FRANCOPHONES OUTSIDE OF QUEBEC - INQUIRY

The Honourable Jean-Maurice Simard rose pursuant to notice of Wednesday, June 3, 1998:

That he will call the attention of the Senate to the current situation with regard to the application of the Official Languages Act, its progressive deterioration, the abdication of responsibility by a succession of governments over the past 10 years and the loss of access to services in French for Francophones outside Quebec.

Honourable Senators, section 133 of the 1867 Constitution Act expressly allows Canadians to use either the English or the French language in the various federal institutions.

In other words, since Confederation, the linguistic reality of Canada has been front and centre in our country's political life. It has been reviewed and studied many times. As a result of this examination, through the years Canadian political parties have developed positions on the language issue. Eventually, this led to the passage of pieces of legislation and constitutional amendments that were supposed to promote the creation of a suitable bilingual setting in Canada.

In 1969, the Parliament of Canada passed the *Official Languages Act*.

The purpose of this Act is, and I quote, to:

Ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions; support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and

French languages within Canadian society; and set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

Since then, with the patriation of the Constitution and the passage of the *Canadian Charter of Rights and Freedoms* in 1982, and as a result of the reworking of the *Official Languages Act* in 1988, several measures were implemented to enhance bilingualism in Canadian institutions. Moreover, provincial governments accepted certain obligations with regard to teaching French and providing services in French in their respective provinces.

However, over the last decade, federal governments have concentrated their efforts on the need to balance the budget through cuts, reductions, privatisation and decentralisation. Taking precedence over all other priorities, this quest for a balanced budget, as honourable as it may be, has unfortunately relegated the promotion of Canada's two official languages to a position of secondary importance.

The Fédération des communautés francophones et acadienne du Canada and other organizations dedicated to the defence and promotion of the French fact in Canada have documented the impact of federal budget cuts on their ability to serve their own members.

Like these associations, the Commissioner of Official Languages for Canada also underlined serious deficiencies in the application of Canada's *Official Languages Act*. He said that budget cuts and government restructuring:

... have caused a subtle but cumulative erosion of language rights and have weakened the official languages program within the federal public service.

In light of this information, it would seem that the *Official Languages Act* is no longer a priority for Canada's central government. Is that correct?

To determine that and to have the most precise picture possible of the language situation as experienced by Francophones in Canada, I have decided to undertake, over the next few months, a study of this extremely important issue.

In this study, I intend to consult major associations dedicated to the defence and promotion of language rights in Canada. I also intend to contact major political parties in each province as well as at the federal level to obtain information relating to their political positions and their intentions on this issue.

I will also contact the official languages commissioner's regional representatives as well as various sectoral groups whose mandate is to promote the French fact. In New

Brunswick, I am thinking particularly of the Association des enseignants et enseignantes francophones, the Association des municipalités du Nouveau-Brunswick, and the Association des artistes professionnels du Nouveau-Brunswick. I give them merely as examples; there are many more. I plan to also invite them to collaborate with me so that this study will offer the most faithful and the most fair reflection possible of the reality of the French fact on the eve of the 21st century.

Needless to say, I also plan to invite the general public to share its ideas on this with me.

Essentially, I wish to obtain two things from these groups, associations and individuals: documents describing their linguistic situation within their province as far as the *Official Languages Act*, the Charter and the Constitution are concerned, and suggestions for improving the situation and for better attaining the country's objectives of official linguistic duality.

Finally, this fall I shall be tabling a document reporting on the progress, or deterioration, in access to service in French in Canada. To it will be appended all documents provided to me by the political groups and associations, in order to allow you all to draw your own conclusions.

Until then, I sincerely hope that you will be so kind as to share your opinions on this subject with me. If I may, honourable senators, I would like to adjourn this debate. I will get back to you this fall with my findings.

**Appendix 2: Senators Taking Part in the Debate in the Senate of Canada on the
Motion of Inquiry by the Honourable Jean-Maurice Simard**

Date	Senator's Name
June 17, 1998	Motion of inquiry by the Honourable Jean-Maurice Simard
November 4, 1998	The Honourable Gérald Comeau The Honourable Rose-Marie Losier-Cool The Honourable Noël Kinsella The Honourable Louis Robichaud The Honourable Eymard Corbin The Honourable Marie-P. Poulin The Honourable Serge Joyal The Honourable Orville Phillips The Honourable Eugene Whelan
December 1, 1998	The Honourable Rose-Marie Losier-Cool The Honourable Gérald Comeau The Honourable Noël Kinsella
December 8, 1998	The Honourable Sharon Carstairs The Honourable Noël Kinsella The Honourable Gérald Beaudoin
March 9, 1999	The Honourable Eymard Corbin
March 16, 1999	The Honourable Eymard Corbin
May 13, 1999	The Honourable Noël Kinsella
June 15, 1999	The Honourable Jean-Robert Gauthier
June 16, 1999	The Honourable Jean-Claude Rivest

**Appendix 3: Members of Official Language Minority Communities and Other
Individuals Consulted in the Course of this Study**

Name	Affiliation
Archambault, Lorraine	President, Association culturelle franco-canadienne de la Saskatchewan
Arès, Georges	Executive Director, Association canadienne française de l'Alberta
Arsenault, Edgar	Executive Director, Société Saint-Thomas-d'Aquin
Arsenault, Eloi	Chairman, Comité consultatif des communautés acadiennes
Bishop, Lisa	Executive Director, Outaouais Alliance
Blier, Jean-Marie	President, Association française des municipalités de l'Ontario
Boucher, Daniel	President and Executive Director, Société franco-manitobaine
Boudreau, André	President, Centre culturel Marie-Anne Gaboury
Chénier, Diane	President, Association des enseignantes et des enseignants franco-ontariens
Castonguay, Charles	Professor, Department of Mathematics and Statistics, University of Ottawa
Chartier, Richard	Judge, Manitoba
Colvin, Tory	President, Association des juristes d'expression française de l'Ontario
Coté, Dianne	President, La fédération des francophones de la Colombie-Britannique
de la Tour Fondue-Smith, Geneviève	President, Alliance Française de Montréal
Dionne, Jean-Guy	President, Fédération des francophones de Terre-Neuve et Labrador
Doiron, Roger	Past President, La fédération d'alphabétisation du Nouveau-Brunswick
Doucet, Michel	Dean, Faculty of Law, Université de Moncton
Drisdelle, Ronald	Executive Director, Conseil économique du Nouveau-Brunswick Inc.
Goldbloom, Victor	Commissioner of Official Languages
Guénette, Gaston	Assistant Secretary, Treasury Board
Herry, Yann	President, Association Franco-Yukonnaise
Hubert, Benoît	Executive Director, Fédération de la jeunesse canadienne-française Inc.
Johnston, William	President, Alliance Québec
Karp, Ted	President, Canadian Parents for French (Ontario)

Labelle, Annette et Jean-Pierre Côté	President, Commission nationale des parents francophones
Lalande, Miriam	President, Fédération québécoise des associations foyers-écoles
LeBlanc, Gino	President, Fédération des communautés francophones et acadienne
Lebreton, Ronald	Executive Director, L'Association des enseignantes et des enseignants francophones du Nouveau-Brunswick
Légère, René	Secretary General, Société nationale de L'Acadie
Lepage, Gilles	President, Fédération des caisses populaires acadienne
Murphy, Martin	Executive Director, The English Speaking Catholic Council
Paulin, Réginald	Association des municipalités du Nouveau-Brunswick
Participation in symposium	"Dialogue Nouveau-Brunswick", June 1999
Poirier, Raymond	Executive Director, Association des municipalités bilingues du Manitoba
Representatives	Fédération culturelle canadienne-française
Representatives	Fédération des jeunes canadiens-français
Rioux, Marie-Claude	Executive Director, Fédération des parents acadiens de la Nouvelle-Écosse
Robichaud Ulysse	President, La fédération des parents de l'Île-du-Prince-Edouard
Rouselle, Serge	President, Association des juristes d'expression française du Nouveau-Brunswick
Thériault, Daniel	Executive Director, Société des Acadiens et Acadiennes du Nouveau-Brunswick
Walker, John	President, The English Speaking Catholic Council

Appendix 4: Canadian Politicians Who Responded to Senator Simard's Invitation

Name	Political Party
Binns, Pat	Premier of Prince Edward Island
Clark, Glen	Premier of British Columbia
Chrétien, Jean	Prime Minister of Canada
Duceppe, Gilles	Leader of the Bloc québécois
Hampton, Howard	Leader of the Ontario New Democratic Party
Harris, Michael D.	Premier of Ontario
Lord, Bernard	Leader of the New Brunswick Progressive Conservative Party
Macbeth, Nancy	Leader of the Opposition, Alberta
Manning, Preston	Leader of the Opposition, Canada
McDonough, Alexa	Leader of the New Democratic Party of Canada
Romanow, Roy	Premier of Saskatchewan
Taylor, Nick	MLA, Liberal Party of Alberta
Thériault, Camille	Premier of New Brunswick
Tobin, Brian	Premier of Newfoundland and Labrador
Villeneuve, Noble A.	Ontario Minister responsible for Francophone Affairs

Appendix 5: The Five Key Stages Leading to Implementation of Part VII

(This text is from the report of the formative evaluation of the implementation by Western Economic Diversification Canada of section 41, Part VII, of the Official Languages Act.)

It became clear during the evaluation process that the successful implementation of Part VII depends on a necessary progression through a series of pivotal stages. This progression applies both to WD as a whole and to each of its offices, each of its management functions and each of the people involved directly or indirectly in the implementation of Part VII and the management of initiatives flowing from the process.

Information: the degree to which all players are informed of the meaning, scope and obligations of Part VII, and of the reality, the characteristics and developmental possibilities of the MOLCs and on the status and usage of French and English.

Understanding: comprehension of the issues inherent to the satisfactory implementation of Part VII, as well as the depth of appreciation that has been acquired of the principles and dynamics underlying this process, of the particular complications germane to the progression of French and English and to the economic development of MOLCs, of the WD business opportunities emanating from increased MOLC economic activity, and of the implications for WD personnel's spheres of responsibility.

Commitment: WD's (and its personnel's) level of real commitment as demonstrated by the degree to which it has integrated Part VII into its decision-making processes as manifested by the adequacy and sufficiency of its actions.

Capacity: the competencies and expertise, both at the individual and organisational levels, the sufficiency of financial and human resources that WD devotes to all aspects of the implementation of Part VII, as well as the adequacy of the support the Department provides, in accordance with its mandate, to the communities to support them in taking responsibility for their own economic development and to serve as viable counterparts and partners to WD and other federal institutions.

The **emergence** of this capacity depends on a systemic approach which includes the specification of anticipated results, the establishment of appropriate management systems, accountability, appropriate reporting and the integration of Part VII implementation into WD's organisational culture. This capacity will be demonstrated by the existence of an automatic reflex to integrate the requirements of Part VII into any and all analyses or reviews of issues, programs and policies.

The open-mindedness of public servants varies considerably from region to region. It ranges from active resistance through indifference to a predisposition to take action. Support for the department's commitment is far from unanimous, and many people do not appear to be overly concerned about the fact that this commitment is part of a quasi-constitutional federal statute.

Their knowledge of the MOLCs, their understanding of the issues arising from the implementation of Part VII and their ability to seize business opportunities emanating from the communities are for the most part very weak. In some cases, MOLC economic development is not a problem at all. They claim they deal with individuals, not communities. That eliminates the need to act differently toward Francophones because they have the same access to departmental services as others. In any event, some people believe that the small size of the community does not warrant any outlay of resources.

This kind of attitude is of course at odds with the spirit of Part VII. It also runs counter to the department's own philosophy and perhaps even its mission, which is to actively intervene in the economic sector to encourage and support the creation and expansion of businesses and to promote and stimulate the economic development of a particular region and specific target groups. If it were to become widespread, which it has not yet done, this attitude would leave the department shackled.

Appendix 6: Alphabetical List of Federal Institutions with Significant Accountability for Part VII and Their Accountability Ranking

Abbreviation	Institution	Accountability ranking
ACC	Anciens combattants Canada	103
ACDI ⁶⁴	Agence canadienne de développement international	29
ACEC	Agence canadienne d'évaluation environnementale	95
AECI	Affaires étrangères et commerce international	25
Agr	Ministère de l'Agriculture et de l'Agro-alimentaire	22
AINC	Affaires indiennes et du Nord	60
ANC	Archives nationales du Canada	68
ACOA	Agence de promotion économique du Canada atlantique	18
ASC	Agence spatiale canadienne	46
BC	Banque du Canada	53
BCM	Commission canadienne d'examen des exportations de biens culturels	91
BCP	Bureau du Conseil privé	6
BDC	Banque de développement du Canada	28
BEC	Bureau de l'enquêteur correctionnel	114
BEEA	Bureau d'examen de l'endettement agricole	109
BFDRQ	Bureau fédéral de développement régional (Québec)	26
BIG	Bureau de l'inspecteur général	87
BiPa	Bibliothèque du Parlement	65
BNC	Bibliothèque nationale du Canada	58
BSHMC	Bureau des sites historiques et des monuments du Canada	85
BSIF	Bureau du Surintendant des Institutions financières Canada	92
BST	Bureau de la sécurité des transports Canada	111
BVG	Vérificateur général du Canada	16
CAC	Conseil des arts du Canada	24
CCAI	Comité consultatif sur l'autoroute de l'information	59
CCAP	Commission canadienne des affaires polaires	119
CCB	Commission canadienne du blé	100
CCBN	Commission des champs de bataille nationaux	122
CCC	Corporation commerciale canadienne	66
CCDECA	Conseil consultatif de l'Agence de développement économique du Canada atlantique	112

⁶⁴ The shading indicates institutions among the 27 federal institutions designated by Cabinet in August 1994 under the first government strategy on implementation of Part VII of the OLA.

CCDP	Commission canadienne des droits de la personne	57
CCG	Centre canadien de gestion	13
CCLT	Centre canadien de lutte contre les toxicomanies	115
CCMVMO	Commission canadienne de la mise en valeur de la main d'œuvre	52
CCN	Commission de la capitale nationale	30
CCNo	Conseil canadien des normes	77
CCNST	Conseil consultatif national sur la science et la technologie	48
CCNTA	Conseil consultatif national sur le troisième âge	83
Ccom	Chambre des communes	7
CCRP	Conseil consultatif du Régime de pensions	125
CCRRMD	Conseil de contrôle des renseignements relatifs aux matières dangereuses	116
CCRT	Conseil canadien des relations de travail	72
CCT	Commission canadienne du tourisme	45
CDA	Commission des droits d'auteur	123
CDIC	La corporation de développement des investissements du Canada	56
CF	Cour fédérale	20
CFC	Condition féminine Canada	47
CFP	Commission de la fonction publique	17
CI	Cour de l'impôt du Canada	80
CIC	Ministère de la Citoyenneté et de l'Immigration	21
CICPVP	Bureau du Commissaire à l'information du Canada et du Commissaire à la protection de la vie privée	75
CIDPDD	Centre international des droits de la personne et du développement démocratique	71
CIP	Commissions internationales des pêches	86
CISR	Commission de l'immigration et du statut de réfugié	99
CLO	Commissaire aux langues officielles	9
CMF	Commissaire à la magistrature fédérale	61
CMI	Commission mixte internationale	94
CN	Canadien national	55
CNA	Centre national des arts	41
CNBE	Conseil national du bien-être	49
CNCPF	Conseil national de commercialisation des produits de la ferme	110
CNLC	Commission nationale de libérations conditionnelles	82
CNRC	Conseil national de recherches Canada	33
CPC	Commission de la pension canadienne	128
CPPGRC	Commission des plaintes du public contre la GRC	127
CRC	Centre de recherches des communications	102
CRDI	Centre de recherche pour le développement international	78

CRM	Conseil de recherches médicales du Canada	79
CRSH	Conseil de recherches en sciences humaines	38
CRSNG	Conseil de recherches en sciences naturelles et en génie	44
CRTC	Conseil de la radiodiffusion et des télécommunications canadiennes	11
CRTFP	Commission des relations de travail dans la fonction publique	89
CSC	Cour suprême du Canada	12
DEO	Ministère de la Diversification de l'économie de l'Ouest	23
DN	Ministère de la Défense nationale	32
DRHC	Développement des ressources humaines Canada	2
EAC	Entreprises Autochtones Canada	90
EACL	Énergie atomique du Canada limitée	113
EC	Environnement Canada	67
ÉlectC	Élections Canada	42
FEDNOR	Initiative fédérale du développement économique dans le nord de l'Ontario	43
Fin	Ministère des Finances	19
GRC	Gendarmerie royale du Canada	76
IC	Ministère de l'Industrie	3
Jus	Ministère de la Justice	5
LAECA	Loi sur l'assurance emploi : conseils arbitraux	120
MA	Marine Atlantic Inc.	107
MBAC	Musée des beaux-arts du Canada	64
MCC	Musée canadien des civilisations	39
MCN	Musée canadien de la nature	106
MNST	Musée national des sciences et de la technologie	69
OCN-EH	Office Canada - Nouvelle-Écosse des hydrocarbures extra-côtiers	118
OCPED	Office de commercialisation du poisson d'eau douce	124
OCT-NH	Office Canada - Terre-Neuve des hydrocarbures extra-côtiers	117
ONE	Office national de l'énergie	88
ONF	Office national du film	27
OSPA	Office de stabilisation des prix agricoles	101
PC	Ministère du Patrimoine canadien	1
POC	Ministère des Pêches et Océans	36
QQWLC	Queen's Quay West Land Corporation	105
RC	Revenu Canada	40
RNC	Ressources naturelles Canada	37
SA	Secrétariat de l'ALENA	96
SADC	Société d'assurance-dépôt du Canada	108
SC	Statistique Canada	10

Sca	Ministère de la Santé	15
SCAg	Société du crédit agricole	74
SCC	Service correctionnel du Canada	63
SCHL	Société canadienne d'hypothèques et de logement	51
SCIC	Secrétariat des conférences intergouvernementales canadiennes	54
SCP	Société canadienne des postes	34
SCPo	Société canadienne des ports	97
SCRS	Service canadien du renseignement de la sécurité	93
SCT	Conseil du Trésor	4
SDCB	Société de développement du Cap-Breton	104
SEE	Société pour l'expansion des exportations	73
Sénat	Sénat	31
SGC	Solliciteur Général Canada	70
SRC	Société Radio-Canada	8
TAC	Tribunal des anciens combattants	121
TACi	Tribunal de l'aviation civile	126
TC	Ministère des Transports	62
TCCE	Tribunal canadien du commerce extérieur	81
TCRAP	Tribunal canadien des relations professionnelles artistes-producteurs	98
TfC	Téléfilm Canada	35
TPSGC	Travaux publics et Services gouvernementaux	14
VMSL	Voie maritime du Saint-Laurent	84
VR	Via Rail Canada Inc.	50

**Appendix 7: Population by Mother Tongue, Canada, Provinces and Territories,
1986, 1991 and 1996**

		TOTAL Number (,000)	French Number (,000)	%	English Number (,000)	%	Other languages Number (,000)	%
Canada	1986	25,022	6,275	25.1	15,559	62.2	3,188	12.7
	1991	26,994	6,562	24.3	16,311	60.4	4,121	15.3
	1996	28,528	6,712	23.5	17,072	59.8	4,744	16.6
Newfoundland	1986	564	3	0.5	557	98.8	4	0.7
	1991	564	3	0.5	556	98.6	5	0.9
	1996	547	2	0.5	539	98.5	6	1.0
Prince Edward Island	1986	125	6	4.5	118	94.3	2	2.1
	1991	128	6	4.5	121	94.3	2	2.5
	1996	133	6	4.5	125	94.1	2	2.8
Nova Scotia	1986	864	35	4.0	811	93.9	18	1.2
	1991	891	38	4.2	832	93.3	22	1.2
	1996	900	36	4.0	838	93.2	25	1.6
New Brunswick	1986	702	235	33.4	458	65.3	9	1.3
	1991	716	244	34.0	463	64.6	10	1.4
	1996	730	242	33.2	476	65.3	11	1.5
Quebec	1986	6 454	5 344	82.8	666	10.3	444	6.9
	1991	6 810	5 586	82.0	626	9.2	598	8.8
	1996	7 045	5 741	81.5	622	8.8	682	9.7
Ontario	1986	9 001	476	5.3	7 021	78.0	1 504	16.7
	1991	9 977	503	5.0	7 444	74.6	2 030	20.4
	1996	10 643	500	4.7	7 778	73.1	2 365	22.2
Manitoba	1986	1 049	50	4.8	776	73.9	223	21.3
	1991	1 079	51	4.7	793	73.5	235	21.8
	1996	1 100	49	4.5	822	74.7	229	20.8
Saskatchewan	1986	997	24	2.4	823	82.6	150	15.0
	1991	976	22	2.2	813	83.3	142	14.5
	1996	977	20	2.0	824	84.4	133	13.6
Alberta	1986	2 340	55	2.3	1 934	82.6	352	15.0
	1991	2 519	57	2.3	2 046	81.2	417	16.5
	1996	2 669	55	2.1	2 176	81.5	438	16.4
British Columbia	1986	2 850	45	1.6	2 345	82.3	459	16.1
	1991	3 248	52	1.6	2 562	78.9	634	19.5
	1996	3 690	57	1.5	2 809	66.1	824	22.3

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Yukon	1986	23	1	2.8	21	89.2	2	8.1
	1991	28	1	3.3	25	89.8	2	8.0
	1996	31	1	3.8	27	86.8	3	9.4
Northwest Territories	1986	52	1	2.7	29	55.4	22	41.9
	1991	57	1	2.5	32	55.2	24	42.3
	1996	64	1	2.2	26	56.7	26	41.1

Note: Multiple answers were distributed equally among the languages indicated.

Data – sample (20%).

Numbers rounded to the nearest thousand. Percentages based on actual numbers.

Source: Statistics Canada

Appendix 8: Population by Language Spoken at Home, Canada, Provinces and Territories, 1986, 1991 and 1996

		TOTAL Number (,000)	French Number (,000)	%	English Number (,000)	%	Other language s Number (,000)	%
Canada	1986	25,022	6,010	24.0	17,144	68.5	1,868	7.5
	1991	26,994	6,288	23.3	18,441	68.3	2,265	8.4
	1996	28,528	6,449	22.6	19,295	67.6	2,785	9.8
Newfoundland	1986	564	2	0.4	559	99.2	2	0.4
	1991	564	1	0.2	560	99.2	3	0.6
	1996	547	1	0.2	543	99.0	4	0.6
Prince Edward Island	1986	125	4	2.8	121	96.7	1	0.5
	1991	128	3	2.4	125	97.3	0	0.3
	1996	133	3	2.3	129	97.2	1	0.5
Nova Scotia	1986	864	25	2.9	829	95.9	10	1.2
	1991	891	22	2.5	858	96.3	11	1.2
	1996	900	21	2.3	866	96.3	13	1.4
New Brunswick	1986	702	220	31.3	477	68.0	5	0.6
	1991	716	223	31.2	489	68.2	5	0.7
	1996	730	222	30.5	503	68.9	5	0.7
Quebec	1986	6,454	5 335	82.7	791	12.3	328	5.1
	1991	6,810	5 652	83.0	762	11.2	397	5.8
	1996	7,045	5 830	82.8	762	10.0	453	6.4
Ontario	1986	9,001	342	3.8	7,740	86.0	920	10.2
	1991	9,977	319	3.2	8,500	85.2	1 159	11.6
	1996	10,643	307	2.9	8,901	83.6	1 435	13.5
Manitoba	1986	1,049	30	2.9	908	86.5	112	10.6
	1991	1,079	25	2.3	947	87.7	107	9.9
	1996	1,100	23	2.1	972	88.3	106	9.6
Saskatchewan	1986	997	10	0.7	930	93.3	57	5.7
	1991	976	7	0.7	921	94.4	48	4.9
	1996	977	6	0.6	923	94.6	47	4.9
Alberta	1986	2,340	25	1.1	2,143	91.6	172	7.4
	1991	2,519	20	0.8	2,305	91.5	194	7.7
	1996	2,669	18	0.7	2,433	91.1	219	8.2
British Columbia	1986	2,850	18	0.6	2,589	90.9	243	8.5
	1991	3,248	15	0.5	2,910	89.6	323	10.0
	1996	3,690	17	0.5	3,190	86.5	483	13.1

Bridging the Gap: from Oblivion to the Rule of Law

Yukon	1986	23	0	1.2	23	96.6	0	2.1
	1991	28	0	1.4	27	96.7	1	1.9
	1996	31	1	1.8	29	95.4	1	2.9
Northwest	1986	52	1	1.4	34	64.9	18	33.7
Territories	1991	57	1	1.2	38	66.8	18	32.0
	1996	64	1	1.0	44	68.8	19	30.3

Note: Multiple answers were distributed equally among the languages indicated.

Data – sample (20%).

Numbers rounded to the nearest thousand. Percentages based on actual numbers.

Source: Statistics Canada

Appendix 9: Biography - The Honourable Jean-Maurice Simard, Senator

Date of birth: June 21, 1931

Place of birth: Rivière-Bleue, Quebec

Education: University of Ottawa (B.Comm.); McGill University, Montreal, Quebec

Profession: Chartered accountant

- ☐ Elected president of the New Brunswick Progressive Conservative Party from 1968 to 1970
- ☐ Parliamentary service: first elected to the New Brunswick Legislative Assembly as the member for Edmundston in 1970; re-elected in 1974, 1978 and 1982
- ☐ Appointed to the Senate of Canada on June 26, 1985
- ☐ Cabinet posts: New Brunswick Minister of Finance (1970-1974); President of the Treasury Board (1976-1982); New Brunswick Minister responsible for Public Service Reform (1982-1985)
- ☐ The Senator has served on the following Senate committees: Official Languages, National Finance, and Banking, Trade and Commerce.
- ☐ The University of Moncton awarded him an honorary doctorate in 1972.
- ☐ In 1977, he was named Commandeur de la Pléiade (Ordre de la francophonie et du dialogue des cultures).
- ☐ In 1985, he was awarded the Léger Comeau medal for his contribution to the Acadian cause.
- ☐ In 1992, he was honoured by the Fédération acadienne du Québec.
- ☐ In 1999, he was honoured by the Société des Acadiens et Acadiennes du Nouveau-Brunswick.
- ☐ Married with three children: Monique, Jean-Marc and Marie-Pierre.

Appendix 10: The Importance of the French Language

Être, en soi et devant l'Autre

La langue est l'un des éléments les plus déterminants de ce qui fait notre identité. Elle permet non seulement d'exprimer l'être que nous sommes, mais de communiquer cette expression de notre être.

Elle nous est léguée par ceux d'avant, qui l'avaient eux-mêmes reçue de ceux d'avant eux et ainsi de suite, jusqu'à la nuit des temps. La langue est donc un lien vital qui nous inscrit dans une continuité. Une continuité non seulement historique, mais biologique. Et, en ce sens, elle est capitale pour l'édification de notre propre vie et de notre parcours dans ce qui se nomme le destin.

On aura beau dire, la langue est essentielle pour vivre. Même les personnes muettes communiquent entre elles et avec nous au moyen d'une langue, la langue des signes. Une langue des signes qui peut être française, anglaise, ou autre. C'est donc dire la nécessité pour l'être humain de dire à son semblable ou à son vis-à-vis qu'il existe et qui est cet être qui existe.

La qualité de la langue est une autre donnée fondamentale de l'ossature identitaire. La qualité de la langue, en effet, indique la qualité du rapport qui nous lie à la vie. Plus la langue est riche, plus l'expression de l'être qui en découle sera riche aussi. Plus la langue est subtile, plus elle est nuancée, plus elle est vaste, plus la nature de la personne qui l'utilise et la maîtrise sera subtile, nuancée, vaste. D'où la nécessité de l'enseignement d'une langue de qualité, dès le bas âge, et au foyer et à l'école. D'où la nécessité aussi, à l'école, de transmettre la langue non seulement comme « matière à étude », mais comme facteur de vie. Trop souvent, il me semble, le lien n'est pas clairement posé, pour l'élève, entre l'apprentissage des rouages et mécanismes intrinsèques de la langue et son exploitation perpétuelle dans le quotidien, même le plus banal qui soit.

Ainsi, on se contentera d'enseigner à l'élève qui étudie le français que les mots se terminant par « al » prennent la terminaison « aux » au pluriel, sauf exception à la règle, bien sûr. Souvent, l'élève rechignera à absorber toutes ces exceptions qui n'en finissent plus d'être la règle! Mais aura-t-on profité de l'occasion pour lui apprendre aussi que ces règles et ces exceptions proviennent d'une longue, et lente, évolution du français dans le temps et que ces règles et exceptions constituent un legs patrimonial venu du fond des âges; et que ces règles et exceptions nous permettent, aujourd'hui encore, de reconnaître et de nommer et le monde et la vie et la réalité autour de nous, comme elles ont pu le faire pour tous ceux et celles qui nous ont précédés et comme elles le feront pour ceux et celles qui nous suivront?

La langue est un continuum qui nous lie à l'humanité.

Certes, on pourrait décider de changer la règle de la terminaison en « al ». Ce ne serait pas un crime de lèse-francité. Mais l'arbitraire n'a pas sa place dans la langue. La langue est une matière vivante, elle évolue à son propre rythme, comme la fleur pousse à son propre rythme, comme le cœur bat à son propre rythme. C'est d'ailleurs une preuve tangible de la vivacité d'une langue que d'être capable de se retransmettre, de se renouveler, de se transformer par elle-même, en quelque sorte, au fil du temps, des gens, des modes et des influences. Pas de génération spontanée avec la langue! Elle va son petit bonhomme de chemin, empruntant parfois des détours, glissant dans des rigoles, mais toujours sinuante, souple, constante.

Pour le jeune élève qui pioche sur les règles de grammaire, l'apprentissage de la langue peut sembler fastidieux. Mais ce n'est pas seulement une langue qu'on lui enseigne, c'est la cartographie de tout un système de communication qu'on tente de lui transmettre afin qu'il puisse l'intégrer pour mieux s'en servir ensuite... sans même sans rendre compte.

Par exemple, l'élève qui dit : « Le français, ça sert à quoi? », est-il même conscient qu'il est justement en train de faire la démonstration de l'utilité de la langue pour transmettre son opinion, puisqu'il utilise justement le français pour poser cette question, dont il ne faut pas, par ailleurs, méjuger la pertinence dans la bouche d'une jeune personne qui, en posant des questions, apprendra la vie? Aujourd'hui, les ordinateurs ont envahi notre vie. Ils sont là pour rester et se transformer. Mais la manipulation de l'ordinateur est une activité fort complexe qui a ses exigences incontournables, absolues. Il faut non seulement savoir taper sur un clavier, il faut comprendre et saisir bien des codes pour que l'ordinateur réponde à nos demandes. Plus l'utilisateur maîtrise les règles de fonctionnement de l'appareil, plus il lui permet d'être performant, d'être utile. Plus l'ordinateur devient nécessaire.

Il en est de même avec le français. Les codes de la langue ne sont pas une fin en soi, ils sont là pour faire de la langue un outil judicieux, complexe certes, mais nécessaire à la vie.

On pourrait dire la même chose d'autres matières enseignées dans les écoles. Par exemple, la géométrie, la physique, la chimie, l'arithmétique ont toutes en commun le fait d'imposer des règles ou des lois strictes, souvent incontournables, parfois absolues, afin que l'utilisateur soit en mesure de s'en servir. Qui niera donc la nécessité d'un enseignement de qualité en matière de chimie, de mathématiques, de biologie? C'est une condition sine qua non pour la compréhension de ce champ d'action et d'intérêt.

Il en va de même pour la langue, à l'exception près qu'elle est l'estuaire qui débouche sur toutes les autres dimensions de la vie. Quand on est francophone, on utilise le français pour tout. Tout dire, tout penser, tout écrire, tout lire, tout rire, tout vouloir,

tout changer, tout toucher, tout transmettre.

Impossible d'expliquer ses malaises à son médecin si l'on ne recourt pas à sa langue d'expression. Impensable d'inviter sa petite amie au bal des finissants si l'on ne fait pas appel à cet outil important qu'est sa langue d'expression. Et ainsi de suite, dans tous les domaines de la vie. De la liste d'épicerie au testament. Du premier « maman » gazouillé par l'enfant, jusqu'au dernier « adieu » soufflé sur son grabat. Dans cette optique, la qualité du français est primordiale. Elle irise toute relation, tout échange, d'une myriade de reflets qui donnent à la vie sa densité réelle. Qui fait de l'acte de parole, un constat d'authenticité. Qui dit à l'Autre :

« Je suis, réel et vivant. Et tu es aussi, par conséquent, réel et vivant. Et nous sommes. Et nous sommes la vie. »

Et rien n'existe qui soit plus vital que d'être. Rien n'est plus essentiel que la vie.

Rino Morin Rossignol
Montréal, septembre 1999

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Note: Rino Morin Rossignol was born in Madawaska, New Brunswick, and now makes his home in Montreal. He worked closely with Senator Simard, then a minister in Richard Hatfield's government, on issues related to the development of language rights in New Brunswick. Former editor-in-chief and editorial writer with the New Brunswick newspaper Le Matin, he has always been very interested in all aspects of the French fact in North America; in recognition of that interest, he was awarded the title of Chevalier de l'Ordre de la Pléiade by the Assemblée internationale des parlementaires de langue française. It was in that capacity that Senator Simard invited him to share his thoughts on the French language with readers of this report.

Appendix 11: Canadian Charter of Rights and Freedoms

The guide to the Charter published by the Government of Canada includes the text of each provision of the Charter and a brief explanation of its meaning and purpose. We have compiled the sections that are directly related to Canada's official languages policy and that constitute its constitutional framework.

Section 15

Equality Rights

1. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
2. Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

This section of the Charter makes it clear that every individual in Canada - regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability - is to be considered equal. This means that governments must not discriminate on any of these grounds in its laws or programs.

The courts have held that section 15 also protects equality on the basis of other characteristics that are not specifically set out in it. For example, this section has been held to prohibit discrimination on the grounds of sexual orientation.

The Supreme Court of Canada has stated that the purpose of section 15 is to protect those groups who suffer social, political and legal disadvantage in society. Discrimination occurs where, for example, a person, because of a personal characteristic, suffers disadvantages or is denied opportunities available to other members of society.

At the same time as it protects equality, the Charter also allows for certain laws or programs that favour disadvantaged individuals or groups. For example, programs aimed at improving employment opportunities for women, Aboriginal peoples, visible minorities, or those with mental or physical disabilities are allowed under section 15(2).

Section 16

Official Languages of Canada

1. English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
2. English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.
3. Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Section 16(1) confirms that English and French are Canada's official languages. It also says that these languages have equal status in terms of their use within and by all federal institutions.

The province of New Brunswick is also officially bilingual.

Section 16.1

1. The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.
2. The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

Section 16.1 was added to the Charter in 1993. It makes clear that the English- and French-speaking communities of New Brunswick have equal rights, and that the government of New Brunswick has a duty to protect and promote those rights.

Section 17

1. Everyone has the right to use English or French in any debates and other proceedings of Parliament.
2. Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Section 18

1. The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
2. The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

Section 19

1. Either English and French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.
2. Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Section 20

1. Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where
 - a) there is a significant demand for communications with and services from that office in such language; or
 - b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.
2. Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Sections 17, 18, 19 and 20 all deal with similar issues; the equality of the French and English languages in particular situations. For example, everyone has the right to use English or French in Parliament (section 17). This means that, for example, a witness before a Parliamentary committee may use either official language. Furthermore, federal laws must be published in both English and French (section 18), and everyone has the right to use French or English in any court established by Parliament, including the Supreme Court of Canada (section 19).

Members of the public have the right to communicate with the federal government in either English or French. The government must provide services in both languages at all of its central offices and in other locations where there is a significant demand for them or it would be reasonable to expect them (section 20).

Sections 16 to 20 make clear that official languages rights apply both to the federal government and to the provincial government in New Brunswick. Residents of New Brunswick also have the right to use French or English when they deal with their

provincial government.

Section 21

Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

The purpose of section 21 is to protect language rights that already exist in other parts of the Constitution. In particular, the Constitution gives the people of Québec and Manitoba the right to use either English or French in the legislatures and before the courts of those provinces, and the right to have provincial laws adopted in both English and French.

Section 22

Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

Section 22 ensures that the rights in the Charter to use English or French do not create a limit on rights to use other languages that may exist under other laws.

Section 23

Minority Language Educational Rights

1. **Citizens of Canada**
 - a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
 - b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
2. **Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.**
3. **The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province,**

- a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
- b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

This section of the Charter requires provincial governments to provide education to Canadians in the official language of their choice, even in areas where a minority of residents speak that language.

In nine provinces and in the Yukon and the Northwest Territories, most people speak English. In these areas, Canadian citizens have the right to have their children educated in French if any of the following three situations apply:

- if their first language is French,
- they received their own primary education in Canada in French, or
- they have a child who has received or is receiving his or her education in French in Canada.
- In Québec, where most people speak French, Canadian citizens have the right to have their children educated in English:
- if they received their own primary instruction in Canada in English, or
- if they have a child who has received or is receiving his or her education in English in Canada.

According to section 59 of the *Constitution Act, 1982*, the right of persons whose first language is English, who wish to have their children receive English-language instruction, does not apply in Québec until permitted by the legislative assembly or government of Québec.

In all cases, the right to receive an education in a minority language applies only when there is a sufficient number of eligible children to justify providing schooling in that language. Where those numbers do exist, governments must provide the necessary facilities.

Section 24

Enforcement

1. Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
2. Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established

that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Anyone who believes his or her rights or freedoms under the Charter have been infringed by any level of government can go to court to ask for a remedy. That person then must show that a Charter right or freedom has been violated. If the limit is one that is set out in the law, then the government will have an opportunity to show that the limit is reasonable under section 1 of the Charter. If the court is not convinced by the government's argument, then it can grant whatever remedy it feels is appropriate under the circumstances. It may also make an order that the law in question is of no force or effect. This power comes from section 52 of the *Constitution Act, 1982*.

In criminal cases, a court may make an order stopping or delaying the trial of a person whose rights have been denied. A special remedy is available under section 24(2) if the denial of a Charter right takes place during a government investigation. If, for example, a government gets evidence through an unreasonable search or seizure (section 8), then a court may order that the evidence not be used in court. A court will only make an order of this kind if use of the evidence "would bring the administration of justice into disrepute".

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